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The right to food

Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2001/25

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Executive summary

In this his second report to the Commission on Human Rights, the Special Rapporteur reports on all activities undertaken since the last report and continues to build a theoretical and empirical corpus of work that will give content to the right to food.

In accordance with the latest estimates of the Food and Agricultural Organization of the United Nations, from 1997 to 1999 there were 815 million undernourished people in the world, mainly in the 122 third world countries. Every year 36 million people die, directly or indirectly, as a result of hunger and nutritional deficiencies. Every seven seconds a child under the age of 10 dies, directly or indirectly, of hunger somewhere in the world. Over 2.2 million people die from diarrhoea every year, mostly babies and children, as a result of unclean drinking water. We now know that malnourishment handicaps people for life. Brain cells do not develop, bodies are stunted, blindness and diseases become rife, limiting potential and condemning the hungry to a marginal existence. A vicious circle reproduces itself from generation to generation, as every year tens of millions of undernourished mothers give birth to babies stunted and malformed from undernutrition. This silent tragedy occurs daily in a world overflowing with riches. A world which already produces enough food to feed the global population of 6.2 billion people.

The report is structured as follows. First, it looks at the justiciability of the right to food, which is essential so that Governments are held to account for violating their obligations under international law. The report shows that right to food can be considered justiciable and that justiciability is beginning to develop through jurisprudence at the national level. In addition, enforcement mechanisms at the regional and international levels are becoming stronger. These mechanisms are still weak, but much progress is being made to establish the justiciability of the right to food.

Next, the report returns to the question of the right to food under international humanitarian law, and particularly the question of the rules and principles of humanitarian assistance. All provision of humanitarian aid should respect the key principles of neutrality, impartiality and strictly humanitarian objectives. Violations of the rules and principles of international humanitarian law are examined in the cases of Afghanistan, the occupied Palestinian territories and Myanmar. The Special Rapporteur then moves to questions of international trade. The beginning of a new round of trade negotiations, agreed at the World Trade Organization Ministerial Conference held in Doha in November 2001, makes it imperative that human rights are brought into the debate on trade. As Warren Allmand, the President of the Canadian NGO Rights and Democracy, has stated, "We live in a world where it is more serious to break trade rules than it is to violate human rights". The effects of sanctions on the right to food are examined in the cases of Cuba and Iraq. The report ends with a series of conclusions and recommendations for the realization of the right to food.

The Special Rapporteur recommends that States take concrete steps to immediately reduce hunger and malnutrition. He also recommends that States establish and implement national legislation on the right to food and formally recognize the justiciability of this right. In addition, measures at the international level should be taken, including the adoption of the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights and a

code of conduct on the right to food. Further, all States should meet their binding obligations under international humanitarian law to respect the right to food in armed conflicts; in particular the principles and rules which govern humanitarian assistance must be respected in order to prevent the starvation of innocent people.

The Special Rapporteur believes there are profound internal contradictions in the United Nations system, which amount to a sort of schizophrenia within the United Nations system. On the one hand, the United Nations agencies emphasize social justice and human rights. In Vienna, at the 1993 World Conference on Human Rights, Member States proclaimed the importance of economic, social and cultural rights, including the right to food. United Nations agencies, including the Food and Agriculture Organization of the United Nations, the United Nations Development Programme, the United Nations Children's Fund and the World Food Programme, and many others do excellent work in promoting development. On the other hand, the Bretton Woods institutions, along with the Government of the United States of America and the World Trade Organization oppose in their practice the right to food by means of the Washington Consensus, emphasizing liberalization, deregulation, privatization and the compression of State domestic budgets, a model which in many cases produces greater inequalities. As all the United Nations agencies, including the Bretton Woods institutions, have the obligation to report to the Economic and Social Council, the Special Rapporteur recommends that these internal contradictions be addressed by States that are parties to both the human rights treaties and members of the financial institutions. The contradictory behaviour of States has to be corrected.

Time is not an abstract entity. Time is human life as people die of hunger. The Special Rapporteur urges States to reconsider the commitments they made at the 1995 World Summit for Social Development on the right to food and at the 1996 World Food Summit to halve the number of undernourished by no later than 2015. Since the average annual decrease now stands at about 6 million people, to meet the Summit's goals the average annual decrease required should be 22 million. It is urgent that States rethink national and international policies to ensure that this goal is achieved. He also recommends that United Nations agencies, including FAO, WFP, IFAD and others, as well as the bilateral development cooperation agencies, adopt a rights-based approach. The silent, daily massacre of hunger must be stopped.

Introduction

1. At its fifty-sixth session, the Commission on Human Rights adopted resolution 2000/10, in which it decided to appoint a special rapporteur on the right to food. On 4 September 2000, the Chairperson of the Commission appointed Mr. Jean Ziegler (Switzerland) as Special Rapporteur. He then submitted his first report to the Commission in April 2001 at its fifty-seventh session (E/CN.4/2001/53). At that session, the Commission adopted resolution 2001/25 by a roll-call vote of 52 votes to 1 (United States). In this resolution, the Commission commended the Special Rapporteur for his valuable work in the promotion of the right to food (para. 7). It reconfirmed his mandate as spelled out in resolution 2000/10 and further requested him to pay attention to the issue of drinking water, taking into account the interdependence of this issue and the right to food (para. 9). In addition, it encouraged the Special Rapporteur to mainstream a gender perspective in the activities relating to his mandate (para. 11). Finally, it requested him to submit a preliminary report to the General Assembly at its fifty-sixth session (A/56/210) and a final report to the Commission at its fifty-eighth session.

2. The Special Rapporteur hereby submits his second report to the Commission, with the aim of reporting on his activities since his last report and further developing the conceptual framework for the right to food. Since his last report, the Special Rapporteur has undertaken many different activities. He reported on most of these activities in his presentation to the informative one-day session of the Commission held on 25 September 2001, but again will review these activities for this report.

3. The activities of the Special Rapporteur have included the preparation and submission of his preliminary report (A/56/210) to the General Assembly at its fifty-sixth session. The report covered the following aspects: the definition of the right to food in international human rights law, the right to food in international humanitarian law, the nutritional aspects of drinking water, international trade and the need to ensure that trade rules do not conflict with the right to food. The report outlined concrete steps towards local food security and encouraged the adoption of national legislation and an international code of conduct on the right to food. It recommended that international agencies adopt a rights-based approach and urged States to fulfil their commitments made at the World Summit for Social Development and the World Food Summit to ensure the eradication of hunger in the world today.

4. The Third Committee of the General Assembly adopted on 27 November draft resolution A/C.3/56/L.48 on the right to food, in which it commended the Special Rapporteur, for his valuable work (para. 8); reaffirmed the right to food (para. 2) and supported the realization of the mandate as outlined by the Commission (para. 9). It also emphasized the request to the Special Rapporteur to contribute to the review of the implementation of the Rome Declaration on World Food Security and Plan of Action (para. 10) and requested the Special Rapporteur to submit a comprehensive report to the Commission at its fifty-eighth session and an interim report to the Assembly at its fifty-seventh session (para. 16). The Third Committee adopted the proposal by a vote of 146 votes in favour, 2 against (United States, Israel) and 2 abstentions (Australia, New Zealand). In explaining its negative vote at the Third Committee, the United States of America stated that food must be within the purview of national policies for growth and the open market; the "right to food" could not be brought before national or international courts. New Zealand and Australia disagreed with the reference to the impact

of trade on world food security in the Special Rapporteur's report. On 19 December 2001 the General Assembly adopted the proposal by the Third Committee, which became resolution 56/155. The vote on the draft resolution was 169 in favour, 2 against, with 2 abstaining.

5. The Special Rapporteur has also carried out his first official country mission, to Niger in West Africa (27 August-4 September 2001). Niger suffers from chronic food insecurity and is the second poorest country in the world, after Sierra Leone, in the UNDP Human Development Index. The mission report is presented to the Commission as an addendum to this report.

6. The Special Rapporteur also carried out two unofficial preparatory missions to Venezuela (10-15 July 2001) and Brazil (1-7 August 2001) to explore the situation of the right to food in these countries and prepare for future official missions. In Venezuela, the Special Rapporteur examined the first results of the Government's "Plan Bolivar" and the fight against malnutrition, and also gave a speech at the special session of the Latin American Parliament in Caracas. In Brazil, the Special Rapporteur addressed a meeting organized by the MST (Landless Workers Movement) Central Committee and the Lawyers Association of Sao Paolo, and visited MST *asentamientos* and *acampamentos*.

7. The Special Rapporteur is now in the process of organizing an official mission to Brazil, following the invitation received from the Government. The mission is being planned for March 2002. Given this timing, the Special Rapporteur notes that the mission report will not be available in time for review by the Commission at this session. The Commission might wish him to report to the General Assembly at its fifty-seventh session.

8. The Special Rapporteur has also prepared a handbook entitled "The right to food: what parliamentarians can do in the fight against hunger" for the Inter-Parliamentary Union (IPU). This forms part of the Special Rapporteur's efforts to promote the justiciability of the right to food at the national level. The IPU is a powerful international organization of parliamentarians from over 141 national parliaments around the world which agreed to collaborate with the Special Rapporteur to promote the adoption of national legislation on the right to food. The handbook was discussed at the 106th Inter-Parliamentary Conference of the IPU held in Ouagadougou from 9 to 14 September 2001 under the auspices of the IPU Committee for Sustainable Development. It was agreed at that meeting that the handbook will be published as part of an IPU series of *Handbooks for Parliamentarians* by March 2002, in time for the 107th Conference of the IPU. The Special Rapporteur welcomes the interest of the IPU and parliamentarians around the world and hopes that this will prove an important step forward.

9. The Special Rapporteur has also been in contact with a number of non-governmental organizations, including the International Jacques Maritain Institute and FIAN - Food First Information and Action Network regarding their work on the development of an international code of conduct on the right to food.[1] The Special Rapporteur is encouraging efforts for the drafting of a code of conduct to be put on the agenda of the follow-up meeting to the World Food Summit, (now scheduled to be held from 10 to 13 June 2002). In line with his mandate, the Special Rapporteur has also participated in meetings with the Committee on Economic, Social

and Cultural Rights and the Committee on the Rights of the Child and held consultations with the Office of the High Commissioner for Human Rights (OHCHR). In particular, the Special Rapporteur encouraged the human rights treaty bodies to issue statements on the right to food for the World Food Summit: Five Years Later, which the Special Rapporteur will attend and address.

10. The Special Rapporteur has been invited to be a member of the Panel of Eminent Personalities to consider the implementation of the United Nations Convention to Combat Desertification (UNCCD), within the context of preparatory activities for the World Summit on Sustainable Development to be held in Johannesburg, South Africa, in September 2002. He attended and gave a statement at the first meeting of the Panel in October 2001 in Geneva.

11. On 15 October 2001, on the eve of World Food Day, the Special Rapporteur held a press conference to highlight the right to food in Afghanistan. Other speeches given regarding the right to food included a speech at the annual meeting of Action contre la faim in Paris, and an opening address at the founding assembly of ATTAC Germany (Association for the Taxation of Financial Transactions for the Aid of Citizens) in Berlin. During his visit to New York for the presentation of his report to the General Assembly, the Special Rapporteur held another press conference organized by the United Nations. He also had the opportunity to make a speech on the right to food before a group of Latin American ambassadors at the invitation of the Permanent Mission of Venezuela to the United Nations.

12. In addition, working relationships have been established and contacts have been maintained with United Nations agencies and international organizations. These include, the Food and Agriculture Organization of the United Nations (FAO), the World Food Programme (WFP), the International Labour Organization (ILO), the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs (OCHA), the International Monetary Fund (IMF), the World Bank and the International Committee of the Red Cross (ICRC). In addition, the Special Rapporteur benefited from the cooperation of the following NGOs: Action contre la faim (France), FIAN (Germany), the World Alliance for Nutrition and Human Rights (WANAHR, Norway), Antenna (Switzerland), the International Project on the Right to Food in Development (University of Oslo, Norway), International Service for Human Rights (Switzerland), the International Jacques Maritain Institute (Rome), Amnesty International, the Centre for Economic and Social Rights, as well as many other international and national non-governmental organizations.

13. Several NGOs working on human rights and food security issues have also reported specific violations to the Special Rapporteur, on which he has taken action. Several delegations from NGOs (notably regarding the occupied Palestinian territories and Brazil) have visited the offices of the Special Rapporteur in Geneva to report on violations and urgent actions with respect to the right to food. In addition, an important meeting was held with the Special Rapporteur on 7 November 2001 in New York on Afghanistan, under the auspices of the Centre for Economic and Social Rights, which was attended by a large number of United States-based and international NGOs working on food issues.

14. The framework of the present report is as follows. Firstly, it looks at the justiciability of the right to food. This is important, because there are many people who contest the existence of the right to food, arguing that legal remedies should not be sought for violations of the right to food. They believe that economic, social and cultural rights are not justiciable by their very nature. On the contrary, this report shows that this is not the case - the right to food can be considered justiciable. Justiciability is beginning to develop at the national level. In addition, enforcement mechanisms at the regional and international levels are becoming stronger. Although these mechanisms are still weak, much progress is being made to establish the justiciability of the right to food.

15. Secondly, the report returns to the question of the right to food under international humanitarian law, and particularly the question of humanitarian assistance. In a context in which we can see what is happening on a daily basis in Afghanistan, this subject is worth revisiting. Thirdly, the report looks at questions of international trade following the agreement at the WTO Ministerial Conference held in Doha in November 2001 that a new round of trade negotiations would go ahead. The beginning of a new round makes it imperative that human rights come into the debate on trade. Warren Allmand, President of the Canadian NGO, Rights and Democracy, has stated that today, "[w]e live in a world where it is more serious to break trade rules than it is to violate human rights".[2] The question of drinking water was largely covered in the report submitted by the Special Rapporteur to the General Assembly (A/56/210, paras. 58-71). In the present report the questions of drinking water and of a gender perspective are fully integrated in the relevant sections. Finally, the report ends with a number of conclusions and recommendations.

16. The Special Rapporteur believes that there are profound internal contradictions in the United Nations system, as he has written in *Le Monde Diplomatique* (Paris, November 2001, p. 4), under the title "Schizophrénie des Nations Unies". On the one hand, the United Nations agencies emphasize social justice and human rights. In Vienna, at the 1993 World Conference on Human Rights, Member States proclaimed the importance of economic, social and cultural rights, including the right to food. United Nations agencies, including FAO, UNDP, UNICEF, WFP and many others do excellent work in promoting development. On the other hand, the Bretton Woods institutions, along with the Government of the United States of America and the World Trade Organization, oppose the right to food in their practice; the Washington Consensus, emphasizes liberalization, deregulation, privatization and the compression of State domestic budgets, a model which often produces greater inequalities.

17. The country mission to Niger showed these contradictions clearly at work. Niger is a country in extreme poverty, but the IMF still imposes on it draconian structural adjustment. For example, Niger has wealth of 20 million head of cattle, sheep and camels which are historically much sought after and exported widely. The animals constitute an essential revenue for millions of nomads and peasants. But the privatization of the national veterinary office, under pressure from the IMF, has produced a negative impact: many nomads and peasants cannot afford to consult veterinary officers and cannot afford the prices of vaccinations, medicines and vitamins charged by the commercial traders. In addition, the privatization, under pressure from the IMF, of the public transport company, the Office national des produits vivriers du Niger (ONPVN) is

slated and may also prove to be a decision with negative effects since trucks transport emergency food and seeds in times of famine. Private companies, operating under the logic of the market, will not venture into the remote areas on bad roads. Result: many villages risk not receiving any help.

18. In addition, this report continues to build on a theoretical and empirical corpus of work that will give content to the right to food. It aims not to repeat issues already covered in the two previous reports, but to continue to develop a cumulative corpus of work. The main aim of this report is to develop an understanding of the right to food and to highlight key instances of violations of the right to food. There is no other way to raise consciousness about the right to food but to denounce violations and report to the Commission. As the conscience of the United Nations, the Commission can really push forward the normative goal of the empirical work developed by the Special Rapporteur. To increase public consciousness people should be persuaded that everybody can do something to reduce the terrible hunger that still exists in the world today.

19. It is clear that if people come to believe that hunger is intolerable, that starving to death is an affront to human dignity, then the human right to food will become a necessity and a reality. As Georges Abi-Saab, eminent professor of international law, says:[3]

> "international law, like all law, does not arise from a vacuum or a social void, and does not always emerge in the legal universe in some 'big bang'. In most cases, it is the result of progressive and imperceptible growth, through the process of development of the values of a society; new ideas appear and take root; they strengthen into values which become more and more imperative in the social consciousness, to the point where they give rise to the irresistible conviction that they must be formally approved and protected. That is the point which marks the threshold of law."

20. If people believe that we should not let people die from starvation, that we should not let people be mentally and physically retarded by constant malnourishment, then they will believe in the right to food. The right to food is inherent in everyone as a human being. Hunger and malnourishment are not the result of fate, they are the result of human actions. There are always actions that can be taken to prevent hunger, prevent famine, prevent people dying from starvation. So, why do States not take this action? One step that can be taken is to make the right to food a reality. This would make a difference.

21. In the world today, it is an affront to human dignity to see how many people starve to death, or live a life not worthy of the name, in conditions of squalor and unable to escape, with minds and bodies that are not whole. In the period 1997-1999, there were 815 million undernourished people in the world - mainly in the 122 third world countries.[4] Malnutrition handicaps people for life. Brain cells do not develop, bodies are stunted, blindness and diseases become rife, limiting potential and condemning the hungry to a marginal existence. The vicious circle reproduces itself from generation to generation, as every year tens of millions of undernourished mothers give birth to babies stunted and malformed from undernutrition. This silent tragedy occurs daily in a world overflowing with riches. A world which already produces

enough food to feed the global population of 6.2 billion people. According to the FAO, we can produce enough food to feed 12 billion people; enough food to give each person every day the equivalent of 2,700 calories. Many people, especially women and children in developing countries, still suffer from what the FAO calls "extreme hunger" as they eat less in a day than the minimum quantity necessary for survival. It is an outrage that every year 36 million people die, directly or indirectly, as a result of hunger and nutritional deficiencies; that every seven seconds we let a child under the age of 10 somewhere in the world die, directly or indirectly, of hunger.[5]

22. We now know that malnutrition can retard mental and physical development. Children are stunted and do not grow properly if they do not receive adequate food, in terms of both quantity and quality. Both staple calories and micronutrients are vital for the functioning of cells and especially of the nervous system. A child may be receiving sufficient calories, but if s/he lacks micronutrients, s/he will suffer from stunted growth, infections and other disabilities, including impaired mental development.[6] What UNICEF calls "hidden hunger" is undernourishment and/or malnutrition between birth and the age of five, and it has disastrous effects: a child suffering from undernourishment and/or malnutrition in the first years of life will never recover. S/he cannot catch up later and will be disabled for life.[7]

23. So the impacts of hunger and malnutrition are extreme: underdevelopment of brain cells, heightened vulnerability to disease, including HIV/AIDS, physical deformities and blindness are only some of these terrible effects.[8] These can also be passed on from generation to generation over the life cycle, as malnourished mothers give birth to babies who are themselves physically and mentally retarded and then pass these problems onto their own children.[9] Every year, tens of millions of seriously undernourished mothers give birth to tens of millions of seriously affected babies - Régis Debray has called these babies "crucified at birth".[10] This leads to a vicious cycle of poverty and underdevelopment. The impacts of hunger and malnutrition therefore affect the very possibility of a country to develop.[11] Children cannot concentrate at school without food in their stomachs. No one can do a productive day's work, physically or mentally, if they are hungry. This means that poor countries can be trapped in a cycle of underdevelopment.

24. As George McGovern wrote in his book *The Third Freedom: Ending Hunger in Our Time*:

> "Of the world's hungry people, 300 million are school-age children. Not only do they bear the pangs of hunger but also their malnutrition leads to loss of energy, listlessness, and vulnerability to diseases of all kinds. Hungry children cannot function well in school - if, indeed, they are able to attend school at all. Hunger and malnutrition in childhood years can stunt the body and mind for a lifetime. No one can even guess at the vastly larger number of older children and adults who lead damaged lives because of malnutrition in their foetal or infant days."[12]

25. Like solid food, drinking water is also in short supply for hundreds of millions of people in the world. To quote a few statistics: over 1 billion people in the world are not connected to a modern water supply system; some 2.4 billion people do not have acceptable sanitation arrangements; 4 billion cases of diarrhoea are recorded every year in the world, 2.2 million of

which are fatal, mostly in the case of children and babies.[13] This is because the food of children and babies, including dried milk, is mixed with unclean water. It is this interconnectedness between food and water which is the reason for including water as a component of the right to food.

26. So, what is the right to food? The Special Rapporteur has already clearly defined the right to food as:

> "The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear."[14]

27. This definition tries to capture the dimension of human suffering that is missing from many formal descriptions of food insecurity: the unbearable, nagging dread that tortures starving persons from the moment they wake up. How, during the day that lies ahead, will they be able to feed their family, provide nourishment for their children and feed themselves? This dread may be even more terrible than the physical suffering and the many aches and diseases that strike an undernourished body.

28. This definition is very close to the definition of food security. However, the rights-based approach to food security also adds a new and vital element: accountability. States parties to the International Covenant on Economic, Social and Cultural Rights are legally bound to respect, protect and fulfil the right to food. Each Government must be held to account if it does not meet its obligations under international law. However, this will only happen if the justiciability of the right to food is established.

I. JUSTICIABILITY OF THE RIGHT TO FOOD

29. Justiciability is absolutely essential in the fight for the right to food. Why? Because making the right to food justiciable means that people can seek remedy and accountability, if their right to food is violated. If Governments are to be properly held to account for not meeting their obligations under international law, then justiciability of the right to food must be fully established. Accountability requires justiciability. This section reviews the reasons why, in the past, the right to food has not been considered justiciable. For a long time, economic, social and cultural rights have not been considered as justiciable *by their very nature*, and were not considered equal to civil and political rights. In this section, The Special Rapporteur moves the debate forward, by showing that in fact, the right to food can be understood as justiciable, by its very nature. Furthermore, justiciability at the national level is increasingly becoming a reality. At the regional and international levels, enforcement mechanisms are becoming stronger. Although enforcement mechanisms are still weak at these levels, particularly for economic, social and cultural rights, they do exist and deserve to be stronger. The right to food must become recognized as justiciable and enforcement mechanisms must be made stronger if Governments are to be held to account for violations of the right to food.

30. Achieving justiciability of the right to food is a prime objective of the Special Rapporteur. So what does justiciability mean? Essentially, justiciable rights are rights that are capable of being adjudicated by a court of law. The victim of a violation shall be able to bring his/her case before the judiciary and look for an effective remedy to the violation that he/she has suffered from a given State. The Committee on Economic, Social and Cultural Rights in its General Comment No. 12 requires that:

> "Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition ... ."[15]

31. When the enforcement mechanism is a court of law, then the right is justiciable. At the regional and international levels, so far a victim of a violation of the right to food still cannot bring a case before a judge; therefore the right is not justiciable. However, in these cases, the regional and international bodies do have some enforcement capacities, although these are weaker in the case of economic, social and cultural rights than for civil and political rights. The Special Rapporteur examines below these enforcement capacities and looks at the progress that could and should be made. First economic, social and cultural rights will be discussed, especially the right to food, to challenge the view that these rights are not justiciable by their very nature.

A. The nature of the right to food as a justiciable right

32. At the 1993 World Conference on Human Rights, States adopted the Vienna Declaration and Plan of Action in which they agreed that:

> "all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."[16]

33. This means that economic, social and cultural rights must be treated as equal in importance to civil and political rights. It also means that they must be considered the same in nature and justiciable. Therefore, the enforcement mechanisms put in place to protect economic, social and cultural rights should be just as strong as the enforcement mechanisms that protect civil and political rights. However, these great words have not yet been translated into reality. There is still a belief that economic, social and cultural rights are very different from civil and political rights, and could never be justiciable or properly enforced.

34. Part of the reason for this is that while 171 States approved by consensus the Vienna Declaration, some States still have an ideological objection to economic, social and cultural rights. For example, in their rejection of the draft resolution A/56/C.3/L.48 on the right to food

at the Third Committee of the General Assembly at its fifty-sixth session, the delegation of the United States of America claimed that the proposal implied that citizens had a right to food and could seek legal remedy if this right were denied by their respective States.[17] This means that the delegation of the United States did not consider that the right to food should be justiciable.

35. Another part of the reason is objection on conceptual and theoretical grounds. In the cold war period, some Western States thought that the nature of the right to food, like other economic, social and cultural rights, was fundamentally different from civil and political rights. It was argued that economic, social and cultural rights were different, by their very nature, and non-justiciable for four reasons: firstly, the right to food was imprecise; secondly, the right to food was subject to the limit of progressive realization; thirdly, the right to food required resources to be provided; and fourthly, that, in the absence of precise national legislation on the right to food, it was difficult for the judiciary to fill the gap that properly belonged to the legislative branch of the State. All these arguments have been used in the past to suggest that the right to food could not be justiciable.

36. The main argument was that civil and political rights were effectively "negative obligations", which means that the State must simply refrain from taking actions that stop people from exercising their civil and political rights. This is seen as inexpensive in terms of resources, as it simply implies that the State should not do something. Economic, social and cultural rights, on the other hand, were viewed as "positive obligations" as they require the State to take positive action to improve the living conditions of people. In this case, positive actions must be taken by Governments, which implies the need for resources. Even when economic, social and cultural rights are laid down in national constitutions, these rights are often considered as "directives" or "guidelines" for Governments, rather than as individual rights that are enforceable in courts. This is because, it is suggested, the judiciary should not have power either to adjudicate the right to food, nor to control policies and resources that are the responsibility of the executive branch of Government. Under article 2 of the International Covenant on Economic, Social and Cultural Rights States parties agree to take steps to the maximum of their available resources, "with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means". In the past, this wording has generally been interpreted as an evolving programme depending upon the goodwill and resources of States rather than an immediate binding legal obligation, backed by sanction of a court of law.

37. However, as the Committee on Economic, Social and Cultural Rights has pointed out, to put economic, social and cultural rights beyond the reach of courts is arbitrary and incompatible with the Vienna principle that these rights are indivisible and interdependent.[18] It is also well known that even implementing civil and political rights does in fact imply resources. The costs of setting up and training the police force, the military and the judiciary to implement international human rights law is not insignificant. It is also clear that civil and political rights as justiciable rights have only become clear through legal developments and judicial jurisprudence. Similarly, as action is taken in the courts in the name of economic, social and cultural rights, it will become clearer how these rights can be treated as justiciable rights. Further, there are several elements that make the right to food more similar to civil and political rights as

commonly still understood. The Special Rapporteur wishes to move beyond these past arguments about the non-justiciability and build a different conceptual framework for the right to food.

38. Firstly, the right to food, and the measures that must be taken, are laid out quite precisely in article 11 of the International Covenant on Economic, Social and Cultural Rights. Paragraph 1 calls on States to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food ... and the continuous improvement of living conditions". Paragraph 2 is more precise, as it demands that States guarantee the fundamental right of everyone to be free from hunger, and asks them to take

> "individually and through international cooperation, the measures, including specific programmes, which are needed:
>
> "(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
>
> "(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

39. Secondly, there are certain limits on the application of the concept of progressive realization of the right to food. In accordance with General Comment No. 12,

> "... States have a core obligation to take the necessary action to mitigate and alleviate hunger ... even in times of natural or other disasters."[19]

40. In addition, General Comment No. 3[20] provides examples of minimum State obligations of immediate nature and puts some limits on the concept of progressive realization.

1. The obligation of non-discrimination

41. Within human rights law, the principle of non-discrimination is not subject to the limitation of progressive realization. Under article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights, the obligation not to discriminate is an immediate duty. Discrimination in access to food on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status cannot be justified under any circumstances, including low levels of resources. This means that it should be ensured, whatever the level of resources, that resources are shared fairly and that specific groups are not discriminated against in the distribution of resources by the State.

2. The obligation to provide a basic minimum subsistence

42. There is also a clear minimum core obligation on all States to provide, at the very least, a minimum essential level of economic, social and cultural rights, including the right to food, regardless of the limitation of progressive realization. The minimum core obligation is an immediate obligation, although it is still subject to available resources. As the Committee on Economic, Social and Cultural Rights has clarified:

> "In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."[21]

43. This also implies the "principle of non-regression", which means that Governments must not adopt regressive policies that lead to deterioration in the current situation of access to food.

3. The obligation to respect

44. Under the right to food, there are three different levels of obligation - the obligations to respect, protect and fulfil the right to food. While the obligations to *protect* and *fulfil* the right to food are certainly positive obligations that require positive actions from the State, the obligation to *respect* is effectively a negative obligation. This means that States must not take any action that interferes with people's access to food - such as, for example, destroying their crops or forcibly displacing them from their land or means of subsistence. As stated in the report to the General Assembly, the obligation to *respect* the right to food entails limits on the exercise of State power that might threaten people's existing access to food. On the other hand, the obligation to *protect* requires States to take an active role to prevent non-State actors, including enterprises or individuals, from violating other people's right to food. The obligation to *fulfil* is also a positive obligation, as Governments must actively seek to identify vulnerable groups and implement policies to ensure these people's access to adequate food and ability to feed themselves. As a last resort, direct assistance may also have to be provided where people are unable to access adequate food for reasons beyond their control.[22]

45. The obligation to respect, therefore, is a negative obligation. It is little different from the negative obligations implied by civil and political rights, in the sense that it does not require extensive government resources to implement. To conclude, part of the obligations under the right to food - namely, the obligation to respect, the obligation of non-discrimination and the obligation to provide a basic minimum subsistence - should be made immediately effective, since they are not subject to progressive realization. A violation of these obligations regarding the right to food is also very clear, and a judge should be able to adjudicate these rights. Therefore, these basic obligations should be considered justiciable by their very nature.

46. In some cases of national legislation there are further limitations on the application of the concept of progressive realization. For example, under the Constitution of South Africa, there is a direct obligation on the State to ensure that every child and every detained person has the right to adequate food, and this is not subject to progressive realization. This is because children and

detainees are considered to be unable to feed themselves (sects. 28, para. 1 (c), and 35, para. 29). These obligations are fairly precise, and in the case of prisoners clearly limited. It becomes an obligation to ensure that the right to food of prisoners is fulfilled, without regard to the limits of government resources, because they are detained at the determination of State authorities. Special protection is granted to children in order to ensure the right to food of children, if this is not guaranteed by caregivers.

47. Finally, the idea of progressive realization does not, of itself, necessarily mean that economic, social and cultural rights cannot be justiciable. This is the case even for the positive obligations included in the right to food: the right to protect and the right to fulfil the right to food. There is progress in constitutional jurisprudence in a number of countries that is developing the concept that both the progressive realization and the requirements of socio-economic rights can be brought to the competence of judges in a court of law.

48. This is the case of South Africa, as elaborated in the case of *Government of the Republic of South Africa v. Irene Grootboom and others*, on violations of the right to housing and issues of forced eviction.[23] In its judgement, the Constitutional Court utilized the criteria of "reasonableness" to review government action or inaction on progressive realization of the rights within the limits of available resources. The Court concluded that the government programme, by leaving out provision for people "in desperate need", failed the test of reasonableness. This means that, in South Africa, while the courts do not define policy, they retain a power to review the "reasonableness" of policies.[24] This sets an important precedent as it shows that, although economic, social and cultural rights are limited by the provision of "progressive realization" under the South African Constitution, these rights may be considered justiciable, in the sense that the Court may review the steps taken towards progressive realization.

49. This kind of reasoning could be used to judge a question of the positive obligations to protect and to fulfil the right to food. Of course, this is not the only way of reasoning, and many other ways could be used to judge cases of the right to food and other economic, social and cultural rights. This will become clear through jurisprudence as the body of jurisprudence on these rights grows. This section shows that the right to food can be considered as justiciable by its very nature, and is therefore equal to civil and political rights. As shown below, justiciability at the national level is increasingly becoming a reality. This is the best enforcement mechanism, as judgements are legally binding. Compared to the national level, enforcement mechanisms are still weak at regional and international levels because they do not generate judgements which are legally binding, particularly for economic, social and cultural rights. However, they do exist and deserve to be stronger, as argued below.

B. Justiciability and enforcement mechanisms

50. As noted above, when the enforcement mechanism is a court of law, then the right is justiciable. At the regional and international levels, so far a victim of a violation still cannot bring a case of violation of the right to food before an international tribunal and therefore the right is not properly justiciable. However, the existing regional and international bodies do have some enforcement capacities, although these are weaker in the case of economic, social and cultural rights, than in the case of civil and political rights.

1. National level

51. At the national level, 20 countries in the world have constitutions that more or less explicitly refer to the right to food or a related norm.[25] These form key texts in the protection of the right to food at the national level. One of the most explicit is in the South African Constitution, which stipulates in its section 27: "Everyone has the right to have access to ... sufficient food and water." However, there are still relatively few countries which have implemented a framework law on the right to food,[26] or broad-ranging national legislation to protect the right to food in a holistic way. Enforcement mechanisms are also weak or non-existent as a consequence of both the fact that national legislation is inadequate and the fact that economic, social and cultural rights are generally not considered to be justiciable, by their very nature. It is therefore not possible to bring a complaint before a court of law. However, there is now very visible progress being made on the justiciability of the right to food. As jurisprudence builds up, it will also become increasingly clear how the right to food can be justiciable. There are already a number of cases of national jurisprudence that show clearly that the right to food and water or other economic, social and cultural rights can be considered justiciable.

52. In terms of the justiciability of the economic, social and cultural rights, including the right to food, the example of South Africa is an exceptional one. In that country, all economic and social rights have been declared justiciable under South African law, and there is a strong commitment to the right to food in the South African Constitution and Bill of Rights. The South African Bill of Rights, which is incorporated into the 1996 Constitution, explicitly provides (sect. 27, para. 1 (b)) that every person in South Africa has the right to have access to sufficient food and water, subject to progressive realization. There are also many other related rights, including the right to have access to social security including, for those unable to support themselves and their dependants, appropriate social assistance (sect. 27, para. 1 (c)). Section 25 also regulates ownership, tenure and access to land, which is the basic means of production of food. It states that no law may permit arbitrary deprivation of property and that the State must take reasonable legislative and other measures, within its available resources, to foster conditions that enable people to gain access to land on an equitable basis. The right to equality and the prohibition of unfair discrimination is also relevant as it protects the right of equal access to food, in particular for disadvantaged and vulnerable groups.[27] The Constitution requires (sect. 7, para. 2) the State to respect, protect and fulfil the realization of all the rights in the Bill of Rights, including socio-economic rights.

53. As discussed in paragraph 48 above, in the case of *Government of the Republic of South Africa v. Irene Grootboom and others*, the Constitutional Court utilized the criteria of "reasonableness" to review Government action or inaction on progressive realization of the rights within the limits of available resources. This sets an important precedent as the Court may review the steps taken towards progressive realization of the economic, social and cultural rights.

54. The enforcement of economic, social and cultural rights, including the right to food, is also strengthened in South Africa by the establishment of a monitoring mechanism to ensure the implementation and progressive realization of the right to food. The South African Human Rights Commission is required, under the Constitution, to report annually to parliament on the

realization of economic and social rights. That acts as another mechanism for monitoring the implementation of those rights and provides a domestic reporting system. The Human Rights Commission has the power to request all relevant departments of State for information on each of the specific rights, including the right to food, which entails requesting information on the fulfilment of different rights from the various government departments and ministries, for example, the department responsible for agriculture and for health.

55. The Commission has the power to issue subpoenas to government departments if they fail to provide adequate information. The Commission sends out questionnaires that are designed specifically to monitor and evaluate actions taken by the State and local governments on specific rights (food, health, education and so on) with respect to State obligations to respect, protect and fulfil each of the rights. The questionnaires request information not only on legislative measures, but also on policies, budgets, monitoring and outcome measures. Measures for particular vulnerable groups must also be identified. The process also includes the use of indicators (e.g. nutrition, stunting and mortality rates) to assess the progressive realization of socio-economic rights and to be able to compare progress with future reports. A section on budgetary measures also seeks to collect data on the available resources that are allocated to fulfil different rights. Such elements aim to improve the measurement of progress and ensure the accountability of State departments in advancing economic, social and cultural rights. The Commission then summarizes the responses of State agencies, analyses them and makes recommendations for better implementation of specific rights, such as the right to food.

56. There are other examples around the world of progress in establishing the justiciability of the right to food and other economic social and cultural rights. At a recent workshop organized by the Office of the United Nations High Commissioner for Human Rights on justiciability, many examples of evolving jurisprudence on economic, social and cultural rights were reviewed, particularly the cases of South Africa, Colombia and India.[28]

57. Important precedents have been set in India showing the justiciability of the right to food and the right to water. One exceptional case on the right to food was brought before the Indian Supreme Court in May 2000. The People's Union for Civil Liberties, in collaboration with other human rights NGOs in India, brought a complaint against the Indian Ministry of Consumer Affairs and Public Distribution, the public Food Corporation of India and six Indian state governments to the Indian Supreme Court. They argued that those federal institutions and local state governments should, inter alia, bear responsibility for mass malnutrition of the people living in those states. In its first judgement, the Supreme Court sided with the NGOs and specified that its judgement related to all Indian state governments. This showed that a major problem such as malnutrition can be brought before a judge in India. The Court decision suggested that federal and local state authorities must bear responsibility for malnutrition of their populations. A complementary judgement will be rendered by the Court in February 2002. The Special Rapporteur will examine this case at greater length in his next report.

58. Another important case on the right to food and minimum subsistence comes from Switzerland. In 1996 the Swiss Federal Tribunal, which is the highest court in Switzerland, recognized the right to minimum basic conditions, including "the guarantee of all basic human needs, such as food, clothing and housing" to prevent a situation where people "are reduced to

beggars, a condition unworthy of being called human".[29] This case suggests that in Switzerland the right to food is a right recognized as inherent in everyone as a human being. The case was brought by three brothers, stateless Czech refugees, who found themselves in Switzerland with no food and no money. They could not work, because they could not get a permit, and without papers, they could not leave the country. They asked the cantonal authorities in Bern for assistance, but were refused. The Tribunal decided that they must have the right, at the very least, to a basic of minimum conditions within Switzerland to prevent them from being reduced to beggary. The right was also reaffirmed in another case by the same Federal Tribunal in 1998.[30] Recognized as a right in jurisprudence through these two cases, the right became an unwritten constitutional right. For this reason, the same right was incorporated into the new Swiss Constitution of 1999. In practice, the right to minimum basic conditions therefore translates into a new responsibility for the State, which must guarantee that the basic human needs of food, clothing and housing are met for everyone within its jurisdiction. The Swiss Federal Tribunal in its decisions recognized that this right is founded on a justiciable claim on assistance from the State. This represents substantial progress for the justiciability of the right to food.

2. Regional level

59. At the regional level, there are three key texts which protect the right to food, directly or indirectly. On the European continent, the European Social Charter is the most important instrument.[31] On the American continent, the Protocol of San Salvador, properly named the Additional Protocol to the American Convention of Human Rights, which came into force in the year 2000, recognizes economic, social and cultural rights, including the right to food.[32] Finally on the African continent, the African Charter on Human and Peoples' Rights recognizes the right to food indirectly, through the right to health.[33]

60. While the enforcement mechanisms at the regional level are different for each of these three key texts, they are still weak, and the right to food is not justiciable at the regional level because none of these conventions provides for judicial bodies to adjudicate the right to food. However, there are signs of progress in the strengthening of these mechanisms, which is extremely important. The developments on the African continent are far in advance of those in both Europe and America and provide an excellent example in terms of enforcement mechanisms and hopes for justiciability.

61. Hope comes from Africa. The African Charter on Human and Peoples' Rights, which came into force in 1986, proclaims the indivisibility and interdependence of all human rights, 12 years in advance of the Vienna Declaration.[34] In the Charter all human rights are considered equal. And all are believed to be justiciable by their nature. The enforcement mechanism which ensures respect for these rights is the African Commission on Human and Peoples' Rights. The Commission can receive reports from States, as well as complaints from individuals and NGOs[35] which can make complaints directly for violations of all rights in the Charter, without distinction.[36] The Commission can make reports and recommendations on violations. These recommendations are not legally binding, but the fact that there is a complaint mechanism available for individuals whose rights have been violated - whether these are civil, political, economic, social or cultural represents important progress.

62. One important precedent is a 1996 case brought by four NGOs against former Zaire (now the Democratic Republic of Congo).[37] In this case, the State was accused of many violations of civil and political rights as well as economic, social and cultural rights.[38] In its reasoning, the Commission treated all of these rights as equal and did not question the non-justiciability of economic, social and cultural rights. Former Zaire was accused of violating article 16 of the African Charter, which recognizes the right to enjoy the best attainable state of physical and mental health, given the fact that the State had not been able to ensure access to the drinking water essential for life.[39] In the Commission's view,

> "Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that States Parties should take the necessary measures to protect the health of their people. The failure of the Government to provide basic services such as safe drinking water and electricity and the shortage of medicine (...) constitute a violation of Article 16" (para. 47).

63. The Commission held that the actions of former Zaire constituted a violation of the right to health and called for reparations. This demonstrates that economic, social and cultural rights can be considered justiciable by their very nature. Although this opinion was not legally binding, it shows that judgements can be made with respect to these rights.

64. An extremely important step was the adoption of a protocol to the African Charter in 1998 which must be ratified by 15 States parties before it enters into force. Under this protocol, an African Court of Human and Peoples' Rights would be established to make legally binding judgements for violations of all rights protected under the African Charter, including economic, social and cultural rights, such as - indirectly - the right to food. This would mean that complaints could be brought to a judicial body, making all these rights effectively justiciable at the regional African level.

65. Unlike Africa, economic, social and cultural rights are very far from being equal to civil and political rights on the European and American continents. Although civil and political rights on these two continents are protected by judicial bodies - the European Court of Human Rights and the Inter-American Court of Human Rights - this is not the case for some economic, social and cultural rights, including the right to food. Since 1994, European citizens can go to the European Court of Human Rights for a violation of one of their civil and political rights.[40] This means that both recourse and remedy are possible and the decision of the European Court is binding on the State. But this is still not possible for an individual victim of a violation of the right to food in Europe or America.

66. The monitoring mechanism for the European Social Charter is the European Committee on Social Rights, which must review State reports. This Committee must report to the Committee of Governmental Experts, which makes a further report to the Assembly of the Council of Europe. These reports only contain recommendations and are therefore not legally binding. However, the strength of this mechanism has improved with the entry into force of the 1995 Additional Protocol to the European Social Charter. Under the Protocol, collective complaints can now be submitted by groups of NGOs or trade unions, although individual complaints are still not permitted. Ten collective complaints on violations of social rights have

been submitted since 1998. None of these are directly related to the right to food, but the process is an important step forward in the justiciability of social rights at the European level. Such complaints are examined by the European Committee on Social Rights, a quasi-judicial body composed of independent experts. However, its final recommendations have to be approved by the political body; the Committee of Ministers of the Council of Europe.

67. On the American continent, the Inter-American Commission on Human Rights is one of the monitoring mechanisms for the review of State reports on the implementation of economic, social and cultural rights, including the right to food. Under the Protocol of San Salvador, States must submit periodic reports on the progressive measures that they have taken to ensure respect of the rights recognized in the area of economic, social and cultural rights. The Inter-American Commission on Human Rights may formulate such observations and recommendations to States as it deems pertinent concerning the status of the economic, social and cultural rights established in the Protocol, which it may include in its annual report to the OAS General Assembly or in a special report, whichever it considers more appropriate (art. 19.7). However, these recommendations are not binding. Furthermore, the right to food, which is recognized under article 12 of the Protocol of San Salvador, is excluded from the benefit of the system of individual petitions before the Inter-American Commission and the Inter-American Court of Human Rights.[41]

3. International level

68. At the international level, the key text on the right to food is clearly the International Covenant on Economic, Social and Cultural Rights. The monitoring mechanism for the implementation of the right to food is the Committee on Economic, Social and Cultural Rights. The Committee is not a judicial body and its recommendations are not legally binding. This makes the Committee weak as an enforcement mechanism. While its means and methods are very limited, the Committee does excellent work. On becoming parties to the Covenant, Governments are required to report on a regular basis on measures that have been taken to meet their obligations under the Covenant.[42] The Committee has the role of examining these reports. It can then discuss the reports with the State representatives and make its recommendations. However, the effectiveness of the Committee is limited for several reasons. Firstly, many States do not even submit all the periodic reports. Secondly, as stated, the Committee's recommendations are not obligatory. Thirdly, there is no complaints mechanism in force.

69. As, so far, there is no complaints mechanism, individuals or groups of individuals who are victims of violations cannot bring complaints to the Committee, nor obtain reparation. What is significant about this is that it makes the enforcement of the right to food, and other economic, social and cultural rights, much weaker than the current mechanisms which govern civil and political rights. Individuals can present complaints directly to the Human Rights Committee for violation of their civil and political rights if their State is party to the Optional Protocol to the International Covenant on Civil and Political Rights. But they cannot do the same for a violation of their economic, social and cultural rights. This is completely contrary to the commitments made at Vienna in 1993 relating to the equality between civil and political rights and economic, social and cultural rights.

70. However, there are signs of progress and it is possible that in the future, this situation will improve and a complaints mechanism similar to the one that already exists for civil and political rights will be brought into force for economic, social and cultural rights, including the right to food. A draft optional protocol to the International Covenant on Economic, Social and Cultural Rights is currently under discussion[43], which would provide for a complaints mechanism for individual and group petitions to be made to the Committee on Economic, Social and Cultural Rights. It would also allow the Committee to adopt opinions concerning States that have failed to meet their obligations. This will encourage States to cooperate more closely with the Committee and therefore to make necessary changes at the national level to ensure that the right to food becomes a reality. The Special Rapporteur is convinced that an optional protocol to the International Covenant on Economic, Social and Cultural Rights must be brought into effect because it will significantly improve the enforcement mechanism for the right to food at the international level. It would be productive to follow the recommendation of the Sub-Commission on the Promotion and Protection of Human Rights to set up an inter-sessional working group, to ensure that States reach an agreement on the final text.[44] It is important that discussions over the optional protocol do not lead to procrastination. It is time to take this step forward to make economic, social and cultural rights equivalent to civil and political rights and to improve the enforcement of the right to food.

71. At the international level, there are also other legal instruments which are relevant to the right to food. The two main instruments are the Convention on the Rights of the Child[45] and the Convention on the Elimination of All Forms of Discrimination against Women.[46] Both Conventions have a committee which is mandated to examine States parties reports, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women (CEDAW) but both of these committees suffer from weaknesses similar to those of the Committee on Economic, Social and Cultural Rights. However, positive progress has been recently made in relation to the rights of women. On 22 December 2000, the new Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999) entered into force. This provides a complaints mechanism by or on behalf of individuals and groups, and significantly strengthens the force of this convention. This means that the right to food of women may in the future be the subject of individual petitions before CEDAW.

II. HUMANITARIAN LAW AND HUMANITARIAN ASSISTANCE

72. The right to food must be protected in times of peace, but also in times of war. This section looks at the right to food in situations of armed conflict in which international humanitarian law comes into effect and is the more appropriate way to protect people suffering from hunger and malnutrition. This section reviews again the right to food under international humanitarian law, which was addressed in the preliminary report to the General Assembly (A/56/210, paras. 37-57). Then the question of international humanitarian assistance will be addressed. The crisis in Afghanistan has shown that the principles and rules governing humanitarian assistance are absolutely fundamental for protecting the right to food in situations of armed conflict.

A. Rules and principles of humanitarian law and assistance

73. International humanitarian law is designed to protect people and property and to limit the use of certain methods and means of warfare. The bulk of contemporary international humanitarian law rules are contained in the four Geneva Conventions of 1949 and in the two Additional Protocols of 1977.[47] It aims primarily to protect persons not taking or no longer taking part in hostilities such as civilian populations, the wounded or prisoners of war. Women and children are automatically covered as persons not taking part in the hostilities and are given special protection by the conventions and protocols. In contrast to economic, social and cultural rights, international humanitarian law is not subject to progressive realization, but must always be implemented immediately, and there cannot be any derogation from its rules. A basic principle is that parties to an armed conflict must at all times distinguish between the civilian population and combatants and between civilian objects and military objectives, and direct attacks only against military objectives. The logic of humanitarian law is to ensure that civilian populations, who do not play a part in the conflict, should never be victims of war.

74. Whilst international humanitarian law does not mention the "right to food" as such, many of its provisions are aimed at ensuring that people are not denied access to food during conflict. Some of these rules are preventive in nature, other rules apply to relief and humanitarian assistance once prevention fails, and further rules provide for access to food by specific categories of people. Preventive rules include the prohibition of starvation of civilians as a method of warfare, the prohibition of the destruction of crops, foodstuffs, water and other objects that are essential to the survival of civilian populations, and the prohibition of forced displacement.

1. Prohibition of starvation of civilians as a method of warfare

75. The starvation of civilians as a method of warfare is prohibited in both international and non-international armed conflict.[48] That prohibition is violated not only when denial of access to food causes death, but also when the population suffers hunger because of deprivation of food sources or supplies. The prohibition of starvation is elaborated upon in provisions prohibiting attacks against or destruction of items necessary for the survival of the civilian population, including foodstuffs and drinking water:[49]

> "Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works."

76. Physical destruction includes the destruction of crops by chemical defoliants or the pollution of water reservoirs. Violations would also occur if landmines were to render agricultural areas useless. Under the Rome Statute of the International Criminal Court, intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival is considered a war crime in international armed conflict.[50]

2. Prohibition of forced displacement

77. Forced displacement is prohibited under article 49 of the Fourth Geneva Convention. This article prohibits individual or mass forcible transfers of civilians in situations of occupation, except in cases of necessity for the safety of the population or for imperative military reasons. In such cases, evacuation must be effected in a way that guarantees satisfactory "nutrition". Similar provisions are made for non-international armed conflict.[51] Unlawful displacement constitutes a war crime under the Rome Statute of the International Criminal Court in both international and non-international armed conflict.[52]

3. Rules for specific categories of person

78. Numerous rules for specific categories of person are also provided for under international humanitarian law and ensure that those who cannot feed themselves are adequately supplied with food and have the right to relief. Categories include prisoners of war, civilian internees and detainees. Special provisions also exist for women and children.

79. Mothers and pregnant women are afforded special respect under international humanitarian law. Special protection is also provided for pregnant women in occupied territory. Article 89 of the Fourth Geneva Convention provides that women must receive nutritional supplements proportional to their physiological needs. Other articles cover special attention which must be given to women in humanitarian operations. The special protection to be accorded to mothers is essential for the respect of the right to food in armed conflict. To ensure adequate food for women in armed conflict is to protect them and the future health of their children. A State which detains prisoners of war must give them adequate food and water during their captivity and subsequent transfer.[53] And it must, during their internment, ensure that food and water are of adequate quantity, quality and variety.[54] The State is bound by the same obligations concerning civilian prisoners.[55] These people do not participate in the armed conflict; they are innocent, and therefore must be totally protected against the effects of the war.

4. Rules and principles for humanitarian assistance[56]

80. This section looks particularly at the question of humanitarian assistance. The crisis in Afghanistan has drawn our attention to the problem of getting food aid to populations who are starving. Afghans are dying from hunger because humanitarian assistance has been disrupted and blocked for months. International humanitarian law, and the rules of international humanitarian assistance, are designed to ensure that civilian populations, who do not play a part in the conflict, must never be the victims of war. Measures must be taken to protect all people who do not participate in the hostilities. Here we outline the key principles and the most important rules which govern international humanitarian assistance in all situations of armed conflict, not only Afghanistan. These principles, which relate to the neutrality, impartiality and humanity of humanitarian aid, are fundamental and must be applied. All States that are parties to the Geneva Conventions and the Additional Protocols are legally bound by the rules which have been described.

(a) Principles of humanitarian assistance

81. The United Nations has clearly outlined key principles which must be applied to humanitarian assistance. The General Assembly has stated that: "Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality."[57] These principles have also been recognized by the International Court of Justice in 1986 in an important case, *Nicaragua v. United States*.[58] For the United Nations, humanitarian assistance must be coordinated by the United Nations, even if it is provided by other actors - the States concerned, United Nations agencies, the ICRC, NGOs and others.[59] The first aim of all actors providing humanitarian assistance must be the same: to ensure assistance (food or other assistance) which is neutral, impartial and provided with strictly humanitarian motives, as rapidly as possible to all people in need.

82. These same principles have also been emphasized by the ICRC, the organization charged with implementing and developing international humanitarian law and providing humanitarian assistance in situations of armed conflict. To ensure effective relief action, the ICRC calls upon States:

> "To recognize the need for the [Red Cross] Movement to maintain a clear separation between its humanitarian action, on the one hand, and actions of a political, military or economic nature carried out by governments, intergovernmental bodies and other agencies during humanitarian crises, on the other hand, bearing in mind the need for the Movement to maintain, in its humanitarian work, its independence, impartiality and neutrality."[60]

83. Acknowledging that even a perception of bias endangers the safety of aid personnel and compromises their effectiveness, the ICRC rejects any direct involvement of military forces in relief operations, even armed escorts.[61] Indeed, one of the founding principles of humanitarian relief is that:

> "Military operations should be clearly distinct from humanitarian activities. Particularly at the height of hostilities, military forces should not be directly involved in humanitarian action, as this would or could, in the minds of the authorities and the population, associate humanitarian organizations with political or military objectives that go beyond humanitarian concerns."[62]

(b) Rules of humanitarian assistance

84. International humanitarian law contains many rules which protect the right to food for populations caught in armed conflict. These rules cover both the rights of affected civilians to receive aid and the rights of humanitarian agencies to deliver it.

85. Humanitarian law is very clear in a situation of an international armed conflict. The parties to the armed conflict have a duty to ensure that all the basic needs of the civilian population, such as food and water, in the territory under their control are met as far as possible. Parties to the conflict have the primary role in providing assistance to the civilian population living on the territory they control. If these entities cannot provide this assistance, if people lack

access to food and water, they should allow entry of the ICRC or any other impartial humanitarian organization to undertake relief actions. They must also allow the free passage of essential relief supplies intended for civilians. They must authorize and facilitate impartial humanitarian relief operations and ensure the safety of medical and humanitarian personnel.[63] States must facilitate and protect these operations, and must not divert or obstruct the passage of humanitarian assistance.

86. States are required to allow free passage of certain goods for specific categories of people, even if those people belong to the adversary State. The rule was designed to deal primarily with humanitarian assistance in blockade situations and requires free passage of essential foodstuffs for children and pregnant women, although stringent conditions are attached.[64] This was extended under the first Additional Protocol, article 70, paragraph 1, of which covers relief for any civilian population lacking adequate supplies, including food, as long as relief actions are humanitarian and impartial. This is subject to the agreement of the State, but that agreement is expected and a State cannot refuse aid, except in exceptional conditions. Only the minimum is required: to allow the free passage of humanitarian assistance. To refuse is a violation of the right to food, if civilians die of hunger. Indeed, impeding relief supplies is a war crime under the Rome Statute of the International Criminal Court.[65]

87. When humanitarian assistance is provided by impartial organizations, all States, because they are parties to the conventions and protocols, and the parties to the conflict have specific obligations. All States must "allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel ..."[66] and they must "encourage and facilitate effective international coordination of the relief actions".[67] They must not in any way "divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned".[68] In addition, parties to the conflict must also "protect relief consignments and facilitate their rapid distribution" because they are in the country.[69]

88. There are also a series of provisions that relate to relief assistance to civilians in occupied territories, under the Fourth Geneva Convention (arts. 55 and 59, para. 1) and Additional Protocol I (arts. 68-71). The "occupying Power" has the duty to ensure food for the population and must bring in necessary foodstuffs, medical stores and other articles, or allow relief, if the resources of the occupied territory are inadequate.[70] If the State cannot ensure this assistance and the civilian population is not adequately provided with the supplies mentioned, "relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement".[71] In relief operations, there are also several rules which provide special protection for women and children in situations of armed conflict. Children, mothers expecting babies and those breastfeeding their babies must benefit from a special protection in humanitarian relief actions.[72] This special protection means the provision of all food and medicines essential for their survival.[73]

89. Humanitarian law is less complete in the situation of a non-international armed conflict, because there are fewer clear obligations required of States.[74] However, there are clear rules that allow the humanitarian intervention of impartial humanitarian organizations, such as the ICRC, subject to the consent of the parties to the conflict. This is extremely important because it is the only way for the populations who are suffering to obtain the supplies essential for their survival.

Article 3 common to the Geneva Conventions is very important. It contains the right of humanitarian organizations to offer their services. It states that an "impartial humanitarian body, such as the ICRC, may offer its services to the Party to the conflict".[75] This is the basis on which the ICRC can obtain access to the victims of an internal armed conflict. Protocol II, article 18, paragraph 2, says that if "the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of [the parties to the conflict]".

B. Enforcement mechanisms for international humanitarian law

90. Although there are many violations of international humanitarian law in situations of armed conflict, there has been substantial recent improvement in the development of enforcement mechanisms to ensure the implementation of international humanitarian law. These enforcement mechanisms should improve the respect for the right to food in armed conflict.

91. The most important development is the future International Criminal Court, as established by the Rome Statute of 1998. Once the Statute enters into force, it will be possible to bring war criminals who let their populations starve to death during armed conflict (international or non-international) to justice and punish them. Important steps forward in enforcing international criminal law have already been taken through the establishment of international criminal tribunals for the former Yugoslavia and Rwanda.

92. There are also several different ways of ensuring respect of humanitarian law. States parties to the Geneva Conventions and Additional Protocol I are obliged "to respect and to ensure respect" for humanitarian law in international armed conflict.[76] States can call a meeting of all States parties in order to make one State respect any one of these laws. This happened when a meeting was called in Geneva in December 2001 to discuss the situation of the occupied Palestinian territories. States can also put economic and diplomatic pressure, alone or in cooperation with the United Nations, on a State which does not respect international humanitarian law.[77]

93. In the case of a violation of the rules of international humanitarian law, the General Assembly and the Security Council can also take action. For example, in 1988, the General Assembly adopted a resolution in the situation of the Sudan in which it called on all States to provide assistance.[78] Resolutions of the General Assembly are, however, only recommendations and are not legally binding. Only the Security Council can adopt a resolution obligatory for all States, if it takes action under Chapter VII of the Charter of the United Nations. After having determined the existence of a threat to or breach of the peace, it can decide what measures can be taken to maintain or restore international peace and security.[79] The fact that a State does not permit humanitarian or food assistance into its territory or starves its civilian population is not a priori considered a threat to the peace or a breach of the peace. However, the Security Council can determine that there is a threat to the peace and can decide what action should be taken. This is what happened in Somalia and in the Republic of Bosnia and Herzegovina in 1992. Sometimes the situation of famine itself can provoke a threat to the peace.

94. In Somalia, the Security Council determined "that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security". The Security Council demanded "that all parties, movements and factions in Somalia take all measures necessary to facilitate the efforts of the United Nations, its specialized agencies and humanitarian organizations to provide urgent humanitarian assistance to the affected population".[80] In the case of Bosnia and Herzegovina, the Security Council determined that the hostilities were a breach of the peace and initiated actions, including establishing security corridors for humanitarian access.[81] In 1999, the Security Council reaffirmed this idea, and expressed its willingness to respond to situations of armed conflict where humanitarian assistance to civilians is being deliberately obstructed.[82] In this situation the Security Council can act to impose food assistance and to stop the use of starvation as a weapon of war.

C. Violations of the rules and principles of international humanitarian law

95. In this section, the Special Rapporteur examines the urgent appeals and allegations regarding violations that have been submitted to him during 2001. It should be noted that this report was formally closed on 15 December 2001 and that the examples therefore relate only to actions which occurred before that date.

1. Afghanistan

96. On 3 December 2001, the Special Rapporteur received an urgent appeal with respect to Afghanistan, in a joint submission from a number of international and national non-governmental organizations which work in the United States. It was alleged that there have been widespread violations of the right to food of the Afghan people as a result of the recent war and the militarization of food aid. Allegations suggested that all parties to the conflict in Afghanistan were blatantly and routinely violating the right to food, with tragic consequences for the civilian population. Even before the current war, Afghanistan was the poorest country in Central Asia, and 5 million people were at risk of starvation and severe food shortages as a result of decades of conflict compounded by drought, Taliban repression and United Nations sanctions.[83] This situation has deteriorated further as a result of the recent conflict and the lack of respect for the right to food under international humanitarian law.

97. Specific violations of the right to food were alleged. For example, on 16 October 2001, the Taliban temporarily took over two WFP facilities containing 7,000 tons of grain, or 14 per cent of the total food delivery target for November, and one week later occupied and looted an ICRC office in Mazar-i-Sharif.[84] These attacks, and lack of safety for its drivers, prompted WFP to "suspend operations, saying that the military attacks on Afghanistan made it too dangerous and that truck drivers had refused to go inside".[85] It was also alleged that Northern Alliance forces have also routinely looted food deliveries, especially once they established control over most of the country: "Efforts to supply aid to Afghanistan have been severely hit by the return of anarchy on the highways which plagued the country before the Taliban came to power. Hauliers who have ferried aid and commercial goods into Afghanistan since the collapse of Taliban rule have decided to cut back operations after being forced to hand over much of their cargo amid fears for their drivers' safety."[86]

98. Violations of the general principles underlying international humanitarian law have also been alleged which have long-term consequences for the implementation of international humanitarian law. In particular, it was alleged that the sealing of borders by neighbouring countries has restricted the access of humanitarian aid and violated the basic rights of refugees and internally displaced persons. Access to relief aid has also been denied thereby. A general breakdown of the fundamental principles of international humanitarian law and the collapse of the international refugee asylum system was alleged. For example, when Pakistan closed its borders, in particular the Chaman border-crossing both to refugees and humanitarian convoys, it obstructed the delivery of food aid to Afghans sheltering near Kandahar. The Government of Uzbekistan closed its only bridge link to Afghanistan and restricted the use of barges for transporting food aid, making it "impossible to increase the traffic of humanitarian aid that is of such vital importance to the populations of North Afghanistan".[87]

99. It was also alleged that the principles of humanitarian assistance under international humanitarian law have been violated through the United States policy of dropping "bombs and bread". This also has long-term implications. Dropping yellow food packages, the same colour as cluster bombs, from United States military planes has the long-term effect of reducing the credibility of all humanitarian aid, as it does not respect the principles of neutrality, impartiality and strictly humanitarian objectives. A grave concern was also that this method of providing food aid is dangerous, because it is conducted without reception areas cleared of mines and without reception committees to distribute the food to the most needy. As Afghanistan is the most mined country in the world after Angola (over 724 million square metres of land are known to be planted with approximately 10 million mines), the lack of cleared reception areas for the food drops has resulted in fatalities. These efforts have been insignificant compared to the needs of the Afghan people and condemned by relief agencies such as Médecins sans frontière MSF as "purely [a] propaganda tool, of little real value to the Afghan people".[88] Although the United States has dropped 100,000 individual meals, each provides one person with enough calories for one day, and is therefore insignificant to meet the needs of millions of people. However, the most serious concern is that the confusion between military and humanitarian objectives will have severe consequences on the credibility of humanitarian aid in the future.

2. Occupied Palestinian territories

100. The Special Rapporteur received on 15 November 2001, in a joint submission from Palestinian, Israeli and international non-governmental organizations, an updated urgent appeal with respect to the occupied Palestinian territories.[89] It was alleged that the escalation in closure and siege policies imposed by the Israeli occupying authorities since September 2000 have prevented or impeded access to food and water. These policies were alleged to have resulted in the direct denial of access to food and water for communities that have been besieged and cordoned off, especially in specific cases of severe or total closures - often referred to as "curfews" - trapping people in their villages and impeding movement. The closures are keeping people away from their jobs and mean that farmers are unable to reach their remote fields or markets.[90]

101. The policies were also alleged to be strangling the Palestinian economy and the purchasing power of the people to buy food and water. While unemployment was at about 11 per cent in mid-2000 before the intifada began, it skyrocketed to nearly 50 per cent

in mid-2001.[91] Data collected by the Palestinian Bureau of Statistics for mid-July through August 2001 show that approximately half of all households lost more than 50 per cent of their usual income and more than 2 million Palestinians, or 60.8 per cent of all Palestinian households, live below the poverty line.[92] Poverty is especially severe in the Gaza Strip, where an estimated 81.5 per cent of Palestinian households are living below the poverty line. Non-governmental organizations corroborate a report by the Office of the United Nations Special Coordinator in the Occupied Territories (UNSCO) on the impact of the closures on the Palestinian economy updated through 30 June 2001 which estimates that "total income losses to the Palestinian economy since October 2000 range between US$ 1,860 to US$ 2,459 million".[93]

102. Israel's closure and siege policies are also alleged to have obstructed the efforts of international humanitarian agencies to mitigate the harsh effects of these policies on the Palestinian people. For example, the efforts of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to distribute their regular and emergency assistance to refugees in the occupied territories have been severely hampered. The system of permits and closures and the 72 checkpoints imposed in the West Bank alone by the Israeli authorities have slowed and obstructed the access of food aid to populations in need. UNRWA reports that as a result of these restrictions "[m]ore than 45 ten-tonne truckloads of supplies remain at the Agency's West Bank field office awaiting transport to Gaza".[94] They also obstruct the access of the civilian population to adequate water supplies. For example, it was reported that 218 West Bank villages were not connected to the water network, and therefore depend on trucks to supply water for basic needs.[95] However, due to the restrictions of movement imposed since the beginning of the intifada, water tankers have faced enormous difficulties in delivering water. In addition, there is no access to the water resources in areas under curfew.

103. There have also been instances of deliberate destruction of objects belonging to the civilian population. It was alleged, for example, that in August and September 2001 alone, hundreds of roof water tanks for household use have been shot at and destroyed by Israeli soldiers (affecting more than 750 families in Hebron alone). Further, 21 groundwater wells and 64 irrigation networks have been destroyed or blocked up by Israeli soldiers. It was also alleged that the agricultural sector has witnessed severe losses as a result of the Israeli measures. For example, from 29 September 2000 through the end of the year, 12,370 trees and 2,633 dunums of land were destroyed as a result of Israeli measures.[96] In addition, 22,168 trees and 8,198.9 dunums of land have been destroyed as of 5 November 2001, amounting to a total destruction of 34,536 trees and 10,832 dunums of land.[97]

104. The non-governmental organizations alleged that Israel's closure and siege policies cause deliberate impoverishment and a denial of access to food and water in the territories, through restricting the ability of the Palestinian population to purchase adequately nutritious food and water, deliberate destruction, and obstruction of humanitarian access. They argue that Israel's ongoing closure and siege policies imposed throughout the territories violate the Palestinian population's fundamental human right to adequate nutritious food and water, a right which is protected under both international human rights and humanitarian law, on a widespread scale.

105. The Special Rapporteur believes that these allegations suggest that the Israeli occupying authorities are violating its international obligations under articles 55 and 59 of the Fourth Geneva Convention. The Special Rapporteur would also quote the statement of the ICRC to the

Conference of the Contracting Parties to the Fourth Geneva Convention, in which it expressed concern about the humanitarian consequences of the establishment of Israeli settlements in the occupied Palestinian territories. The ICRC declared that the settlement policy "has often meant the destruction of Palestinian homes, the confiscation of land and water resources and the parcelling out of the territories".[98] The Special Rapporteur had requested the Israeli authorities to issue him a visa so that he could carry out a field mission to examine these allegations, as they are directly related to his mandate.[99] So far, this request has not been granted by the Israeli authorities.

3. Myanmar

106. The Special Rapporteur must also report that he had received allegations in relation to Myanmar. These allegations documented gross violations of the right to food by the Government. They concerned the use of food as a political weapon and method of warfare against insurgents and civilian populations. It was alleged that mass forced displacement and forced relocation of people have threatened food security. For example, according to information received from non-governmental organizations, since March 1996 the military had allegedly relocated by force from over 1,400 villages covering an area of over 7,000 square miles more than 300,000 people, who were ordered at gunpoint to move into strategic relocation sites. Reported malnutrition rates are extremely high in both war-affected areas of eastern Myanmar and peaceful areas, in particular the Karen, Karenni and Shan States, as well as the Delta region. Other alleged violations of humanitarian law included the deliberate destruction by government armed forces of staple crops and confiscation of food from civilians.[100]

IV. DEVELOPMENTS IN INTERNATIONAL TRADE AND THE RIGHT TO FOOD

107. The Special Rapporteur fully agrees with the statement, already cited above of the President of Rights and Democracy. This section of the report therefore focuses on developments within the area of international trade and the right to food. After the WTO Ministerial Conference held in Doha in November 2001, where it was agreed that a new trade round would go ahead, and at a time when negotiations on the WTO Agreement on Agriculture are beginning, this is absolutely fundamental.

108. This section reviews some of the elements of international trade and the right to food which was covered in the last report to the General Assembly (A/56/210). It examines international trade liberalization and the trade rules governing agriculture in order to understand how they affect the right to food and the food security of the poorest. It then describes the agenda of the new round of negotiations that was adopted in Doha. This does not contain any reference to the right to food, despite the fact that several proposals being made within the context of the negotiations on agriculture do highlight the right to food. The aim of this section is also to go beyond the previous report to emphasize the call for human rights, especially the right to food, to be respected in international trade obligations. This is fundamental today, as the right to food is not being integrated into the new round of trade negotiations. However, there is progress to report, for example, the Norwegian proposal that food security should be considered a public good. There are also promising new developments which will be relevant to trade and

the right to food. These include the debate on the extension of human rights obligations to non-State actors and recent shifts on the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which will be relevant to, for example, patents on seeds and biotechnology issues.

A. Progress and developments in international trade and the right to food

109. Including the right to food in international trade negotiations is widely understood and believed by many non-governmental organizations to be absolutely necessary. Economic and social rights protect the basic human needs of all people. In today's world, it has become clear that the market by itself cannot guarantee the basic needs of the whole of society. Many people are left by the wayside. As some people in the world get richer and richer, other people are getting poorer and poorer. According to the World Bank, average income in the richest 20 countries is 37 times the average in the poorest 20 countries, a gap which has doubled in the last 40 years.[101] The benefits of globalization and world trade have clearly not been equally distributed. Many individual people suffer from the unequal distribution of food and resources around the world. Action contre la faim writes: "Many poor people around the world do not get enough to eat because food production is geared to cash payment."[102] More people live in extreme poverty now than 10 years ago. The equation is simple: those who have money eat, those without money suffer from hunger, related illnesses, and often die.

110. Many non-governmental organizations also argue that international trade liberalization and globalization have been harmful to food security and the right to food. They argue that the liberalization of agriculture, which has occurred mainly in developing countries (largely under programmes of structural adjustment rather than under WTO provisions), has produced increased hunger and malnutrition rather than safer food security. As Kevin Watkins of OXFAM wrote in *The Guardian*, "Free trade will never feed the world".

111. Developed countries still have more autonomy to control their local food security compared with developing countries. Developed countries have been slower to liberalize agriculture, despite provisions made under the WTO Agreement on Agriculture to create a level playing field in the agricultural trading system in terms of market access, export subsidies and domestic support.[103] Agriculture has continued to be protected and supported in many developed economies, while developing countries have had to liberalize under structural adjustment programmes (removing all subsidy support as well as drastically reducing import barriers to food imports well beyond what is formally required under WTO liberalization).[104] This has created an unlevel playing field in which subsidies of developed countries act as a disincentive to agricultural production in developing countries.[105]

112. Civil society organizations have therefore called for WTO to recognize the primacy of human rights law over international trade law in the new round of trade negotiations.[106] Those non-governmental organizations claim that WTO agreements have had a negative effect on human rights. The Agreement on Agriculture has been blamed for negative impacts on the livelihoods and food security of peasant farmers in developing countries, as those countries have been forced to liberalize and open up their markets without significant reciprocal liberalization of the developed countries in terms of market access, export subsidies or domestic supports. The

TRIPS Agreement has also been widely criticized. In particular, concerns have been expressed that the Agreement could be implemented in a way that limits the access of peasant farmers to seeds for replanting. The Agreement also has been criticized for not actively protecting the indigenous cultural heritage and knowledge from being patented by external interests.[107]

113. Some States are beginning to call for the right to food to be taken up in the new round of negotiations, such as in the Norway proposal referred to above. A number of developing countries have also proposed concrete steps to protect their food security through the inclusion of a "development/food security box" in the Agreement on Agriculture (see below). This issue is clearly extremely complex because food security is important to all countries, but it is the developing countries who face the greatest challenge as food security remains a daily struggle for many families there. The proposal by Norway calls for WTO commitments that do not conflict with States' obligations to respect the right to food. The proposal argues:

> "The WTO policy reform must be undertaken in ways consistent with other relevant multilateral commitments, such as the Convention on Biological Diversity and commitments relating to the right to food. Since the Universal Declaration of Human Rights was adopted by the United Nations in 1948, a number of international legal instruments and recommendations relating to nutritional concerns and the right to food have been developed, recognizing the fundamental right of everyone to be free from hunger and emphasizing the responsibility of the State in this respect."[108]

114. The proposal suggests that the "public good" nature of agriculture demands that some level of subsidies is needed to support local domestic production, but argues for tighter control of export-oriented production to ensure that subsidies are not used to subsidize the export sector, thereby acting as a disincentive on the production of other countries:

> "... NTCs (non-trade concerns) often have public goods characteristics. While private goods can be exchanged in a market, NTCs often have public goods characteristics for which, by definition, functioning markets are lacking. Furthermore, the scope for market creation seems to be limited. While market creation is possible in certain cases, government intervention may be justified in order to correct the underprovisioning of NTCs with public good characteristics and to internalize externalities."[109]

> "... contrary to most private goods for which international markets exist, NTCs, in general, cannot be ensured through trade, but need to be provided by domestic agricultural production. To some extent food security represents an exception, as both domestic production and a predictable and stable trading system contribute to increased food security. The domestic safeguarding of NTCs varies substantially from country to country, as well as within countries, depending on national priorities (i.e. demand side variations) and the cost levels that each country's agricultural sector is facing (i.e. supply side variations)."[110]

115. The "public good" nature of food security is used to justify a minimum of domestic agricultural production in Norway (50 per cent) for partial self-sufficiency; in the case of developing countries, however, the "public good" nature of food security might be very

different. If the capacity of a whole country to develop is severely restrained because millions of mothers give birth to millions of physically and mentally retarded babies, does improving nutrition to help lift a whole country out of poverty not also constitute a "public good"?

116. A number of developing countries, namely Cuba, the Dominican Republic, El Salvador, Honduras, Pakistan, Haiti, Kenya, Nicaragua, Sri Lanka, Uganda and Zimbabwe, submitted a proposal calling for a "food security box" which recognizes the specific food security needs and special situations of developing countries, although it does not mention the right to food.[111] It calls for exemptions under this "box" that would give developing countries greater policy autonomy to protect the production of food staples. They argue that food security is fundamental for national security. NGOs have further suggested that "food security crops" should be defined as crops which are either staple foods in the country concerned, or which are the main sources of livelihood for poor farmers.[112] Of course, there would still be problems, if developing countries could not afford to support local production of small farmers, and if developed country protection continued to limit market access opportunities. However, this proposal does make some concrete suggestions for steps towards changing the WTO Agreement on Agriculture so that it meets the food security needs of the developing countries and evens out the unlevel playing field that currently exists.[113]

117. None of these proposals were examined in Doha. NGOs have argued that, contrary to the claims of European Trade Commissioner Pascal Lamy, Doha did not in fact manage to launch a "development round" to help the poorest countries. The key points of the Doha Declaration,[114] in fact, contradict the interests of the developing countries. The demand for development and security food boxes was completely ignored.

118. If the right to food is not taken up by the WTO, we must search for other means of integrating human rights and the right to food into the rules of international trade. For example, it is important to look at the extension of human rights obligations to non-State actors. Unlike their member States, international organizations such as the WTO and the Bretton Woods institutions are not subject to international human rights law as such, because they are not parties to the international human rights treaties. However, this understanding is changing (as the understanding of justiciability has changed), as new work is being done on the obligations of non-State actors, including multinational companies. It is very important to examine developments in this field. This will be a prime objective of the Special Rapporteur in his next report.

119. Another key new area in progress is the shifting debate on the TRIPS Agreement. There are extremely important developments within the debate on HIV/AIDS and patents on medicines to treat epidemics. Discussions at Doha over new developments in Brazil and South Africa suggest that there may be a victory of the right to health over the right to intellectual property patents. This is very relevant to the right to food, in terms of the long-running debate over biotechnology and patents covering seeds and genetic resources. The HIV/AIDS case could provide a useful framework for examining the situation in relation to questions over the TRIPS Agreement and concerns that patents on seeds limit the access of peasant farmers to seeds for replanting and effectively deny indigenous communities their cultural heritage and knowledge.

On 3 November 2001, within the framework of the FAO, an important treaty, the International Treaty on Plant Genetic Resources for Food and Agriculture, was adopted. These developments are also extremely important and will be examined in the next report of the Special Rapporteur.

B. Economic sanctions and the right to food

1. Unilateral countermeasures: Cuba

120. The Special Rapporteur's attention has been drawn to the specific situation of the long-standing unilateral blockade against Cuba by the United States of America. There can be little doubt that this blockade has seriously damaged the Cuban economy. The Special Rapporteur believes that the blockade constitutes a clear violation of international law and endangers the right to food.

121. More than 40 years ago, the Government of the United States of America imposed economic sanctions as countermeasures against Cuba, in response to the nationalization of enterprises after the 1959 Cuban revolution. In 1996, the Government of the United States reinforced these economic sanctions by adopting the Helms-Burton Act. Under this Act, economic sanctions are imposed not only on Cuba, but on all foreign companies which have commercial dealings with Cuba. Although the imposition of unilateral countermeasures is permitted under international law, the Special Rapporteur notes that they are only permitted if certain principles are respected. These principles are that countermeasures must be proportional and must be directed only against the State directly concerned. The countermeasures adopted by the United States against Cuba violate both these principles - they are not proportionate in terms of their impact on the Cuban people and economy, they violate human rights, including the right to food, and the sanctions are directed not only against Cuba, but also against other States through the foreign companies with which Cuba trades. This is also the opinion of the General Assembly. On 28 November 2001, for the tenth year in a row, the Third Committee of the General Assembly adopted a draft resolution (A/C.2/56/Add.36) condemning the unilateral sanctions of the United States against Cuba and asking for an end to the trade embargo against Cuba by 173 votes to 3.

122. The Special Rapporteur has received information directly from the Government of Cuba regarding the effects of these sanctions on the right to food in Cuba. He has also received information from international NGOs working in Cuba, which provide independent confirmation of these effects. Allegations suggest that the economic blockade has disastrous effects on Cuba's economy. Cubans have not suffered from malnourishment only because the Cuban Government has prioritized social security and access to food for all Cubans. No child is going hungry in Cuba. However, unilateral sanctions severely restrict Cuba's ability to import food easily. They also restrict imports of machinery and other necessary inputs for the modernization of agriculture. These factors substantially raise the cost of food in Cuba. Without the blockade, the cost of imported food and imports would be much lower, and government funds could be invested in productive development. While the Government of the United States has now taken steps to allow Cuba to buy food from the United States, there are many restrictions on the use of this provision and it has not significantly eased the problem. The Special Rapporteur plans to investigate these serious allegations further in his next report.

2. Sanctions by the Security Council: Iraq

123. As stated in his previous report, the Special Rapporteur believes that the Security Council, in subjecting the Iraqi people to a harsh economic embargo since 1991, is in clear violation of its obligation to respect the right to food of people in Iraq.[115] This is the opinion of, among others, Denis Halliday, a former Assistant Secretary-General of the United Nations and former Humanitarian Coordinator for Iraq, and of Marc Bossuyt, former member of the Sub-Commission who submitted a working paper on the adverse consequences of economic sanctions on the enjoyment of human rights to the Sub-Commission in 2000.[116]

IV. CONCLUSIONS

124. As the United Nations High Commissioner for Human Rights said in her lecture at the World Bank on 3 December 2001, recalling the effects of the terrible tragedy of 11 September in the United States:

> "The hope that the turn of the millennium would signal a new era of respect for fundamental freedoms seems like a distant memory now. In its place we are left with the sobering realization that there is as much, if not more, work to do to make human rights a reality for all. Indeed, armed conflicts continue to rage around the world, with their attendant violations of human rights and international humanitarian law."

125. It is clear that there is still much work to be done to make the right to food a reality, both in times of peace and in times of war. We are fighting for a world in which, as Martin Luther King hoped, the word "hunger", like other words of oppression such as slavery, racism and discrimination, will disappear and can be taken out of the dictionary for ever.

126. Hunger and malnutrition still sentence millions of people to underdevelopment and death. It is an outrage that over 815 million people still suffer from hunger and chronic malnourishment and that 36 million people die from hunger or hunger-related illnesses each year. This silent massacre occurs in a world which is richer than ever before and already produces more than enough food to feed the global population. It is intolerable that every seven seconds we let a child under the age of 10 somewhere in the world die, directly or indirectly, of hunger. We now know that malnourishment handicaps people for life. Brain cells do not develop, bodies are stunted, blindness and diseases become rife, limiting potential and condemning the hungry to a marginal existence. The right to food is inherent in everyone as a human being.

127. To make the right to food a reality, its justiciability must be fully established. Governments must be held to account for violations of their obligations concerning the right to food under international law. For a long time, economic, social and cultural rights have not been considered as justiciable by their very nature, and were not considered equal to civil and political rights. This report shows that in fact, the right to food can be understood as justiciable, by its very nature. Justiciability at the national level is increasingly becoming a reality, and enforcement mechanisms are becoming stronger at the regional and international levels. This represents substantial progress. As the High Commissioner for Human Rights has also recently noted, it is time that "economic, social and cultural rights should be recognized and implemented as human rights, rather than shrugged off as fanciful ideals or abstract absolutes".[117]

128. The right to food must be protected also in times of war. This means that the right to food, as protected under international humanitarian law, must be respected. The use of starvation as a weapon of war, forced displacement of civilian populations and the destruction of their means of subsistence are prohibited. Special principles and rules also apply to the provision of humanitarian assistance, including food, in situations of armed conflict. It is fundamental that the principles of the neutrality, impartiality and strictly humanitarian motives of humanitarian assistance be respected if the credibility of humanitarian aid is to be preserved. As the recent conflict in Afghanistan has shown, the rules and principles of international humanitarian law must be respected in order to avoid violations of the right to food. Perpetrators of violations of the right to food such as those alleged in Afghanistan, the occupied Palestinian territories and Myanmar must be brought to account.

129. The human right to food must also be protected within programmes for economic change and international trade. It is intolerable that we should live in a world where breaking trade rules is more serious than violating human rights. At a time when a new trade round has been agreed, it is now urgent that efforts be made to incorporate respect for human rights, particularly the right to food, into the new agreements. The benefits of globalization and world trade have clearly not been equally distributed, as Kevin Watkins of OXFAM noted when he wrote, "Free trade will never feed the world". However. positive new developments are taking place, including the extension of human rights obligations to non-State actors and progress on the TRIPS Agreement which will be relevant to patents on seeds and biotechnology issues. It is also fundamental that the effects of economic sanctions on the right to food be examined and the perpetrators brought to account if they constitute violations of the right to food. The Special Rapporteur's attention in this report was focused on the cases of Cuba and Iraq.

130. The Special Rapporteur believes that drinking water is essential for healthy nutrition, so that it should be considered a public good. Both the quality and the quantity of water available are fundamental. Setting standards for water quality is extremely important, as is ensuring equitable access to water resources to protect social justice. Including drinking water in the right to food is an important way of ensuring such accountability and justiciability.

V. RECOMMENDATIONS

131. Concrete steps should be taken immediately to reduce hunger and malnutrition. Immediate measures to reduce hunger and malnutrition, even in States which have limited resources, should include the following:

(a) *Nutritional education.* This must emphasize the importance of micronutrients as well as calories, focusing especially on the importance of vitamins, minerals and iodine;

(b) *Universal school lunches.* Programmes of food distribution in schools and in crèches are one of the most efficient forms of fighting child malnutrition in both rural and urban areas;

(c) *Maternal breastfeeding.* It is vital that maternal breastfeeding be encouraged by authorities as the best form of combating malnutrition in babies. This means that the 1981 WHO International Code of Marketing of Breast-milk Substitutes must be enforced;

(d) *Family gardens*. Almost everywhere in the world a majority of families in extreme rural poverty could be granted access to a few square metres of land. This would help to develop a food local security strategy to improve nutrition at the household level.

132. Questions of inequality of access to food and water must also be immediately addressed to ensure that there is no discrimination on the grounds of ethnicity, gender, religion or otherwise in access to food and water. Monitoring structures should also be put in place to monitor the progressive realization of improvements in access to food and water for people who are suffering from chronic malnourishment.

133. The Special Rapporteur also recommends that States take measures to develop national legislation to protect the right to food. As outlined in his report to the General Assembly, he also recommends that every State develop a national framework law conforming to the need to respect, protect and fulfil the right to food, recognizing its obligations under international human rights and humanitarian law, as recommended in paragraph 29 of General Comment No. 12 of the Committee on Economic, Social and Cultural Rights. As recommended by the Third Expert Consultation on the Right to Food,[118] the strategy should make an inventory or checklist of issue areas that require national regulation, such as guaranteeing access to productive resources for the food-insecure and the vulnerable, including land tenure and access to water. In addition, a review of existing legislation should be made to assess whether it contradicts the State's obligations under the right to adequate food or lacks adequate implementation. As the non-governmental organization FIAN has argued,[119] this should be an overarching framework that articulates the right to food as a national priority and provides a point of departure to begin the harmonization and revision of diverse laws and sectoral policies so that they all comply with the obligations concerning the right to food.

134. All States should recognize the justiciability of the right to food, along with other economic, social and cultural rights. Enforcement mechanisms should be strengthened at the national level by ensuring that the right to food can be adjudicated by a court of law. Effective administrative and judicial remedies and recourse procedures should be implemented for everyone whose right to food is violated or neglected. International and regional enforcement mechanisms should also be strengthened to improve the implementation of the right to food. The adoption of the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights deserves full support.

135. All should adopt an international code of conduct on the right to food containing voluntary guidelines aimed at achieving food security for all, as called for in objective 7.4 of the 1996 Rome Declaration on Food Security and World Food Summit Plan of Action. The drafting of such voluntary guidelines should be on the agenda of the follow-up meeting to the World Food Summit scheduled to be held from 10 to 13 June 2002. In that respect, the 1997 International Code of Conduct on the Human Right to Adequate Food already drafted and approved by many non-governmental organizations should be taken as an excellent starting point. The Code should be further developed by FAO and the OHCHR in collaboration with other relevant bodies and inter-agency arrangements.

136. All States should respect international humanitarian law to protect the right to food in situations of armed conflict. International humanitarian law must be respected by all parties to the conflict to ensure that civilian populations are not made the victims of war to which they are not party. The principles and rules which govern humanitarian assistance, particularly food assistance, must be respected in order to prevent the starvation of innocent people.

137. The Special Rapporteur strongly recommends that the decisive negotiations on agriculture and other issues currently under way at WTO take food security into particular account and ensure that trade rules do not conflict with international human rights law. International trade obligations must also be reviewed to ensure that they do not conflict with the right to food. The current unfair regime must be revised and developing countries allowed special protection, as it is in those countries that the struggle for food security remains most acute. The new WTO negotiations must take into account the suggestions of the developing countries and must consider the need to protect the right to food. Economic policy changes must not endanger life by causing malnutrition, but guarantee at least a basic minimum that respects at the very least the right to food and the right to life. The Special Rapporteur recommends that the question of drinking water also be given adequate respect, as a fundamental component of the right to food is the elimination of the suffering of many millions of people who suffer from waterborne diseases that are easily eradicable.

138. The Special Rapporteur believes that there are profound internal contradictions in the United Nations system.[120] On the one hand, the United Nations agencies emphasize social justice and human rights. In Vienna, at the 1993 World Conference on Human Rights, Member States proclaimed the importance of economic, social and cultural rights, including the right to food. United Nations agencies, including FAO, UNDP, UNICEF and WFP, and many others do excellent work in promoting development. On the other hand, the Bretton Woods institutions, along with the Government of the United States of America and the World Trade Organization, oppose in their practice the right to food by means of the Washington Consensus, emphasizing liberalization, deregulation, privatization and the compression of State domestic budgets, a model which in many cases produces greater inequalities. As all the United Nations organizations, including the Bretton Woods institutions, have the obligation to report to the Economic and Social Council of the United Nations, the Special Rapporteur recommends that these contradictions be addressed by States that are parties to both the human rights treaties and members of the financial institutions. The contradictory behaviour of States has to be corrected.

139. International agencies, including FAO, WFP, the International Fund for Agricultural Development and others, as well as the bilateral development cooperation agencies, should adopt a rights-based approach in their work of implementing the right to food as set out in paragraphs 40 and 41 of General Comment No. 12.

140. Time is not an abstract entity. Time is human life as people die of hunger. The Special Rapporteur urges States to reconsider the commitments they made at the 1995 World Summit for Social Development on the right to food and at the 1996 World Food Summit to halve the number of undernourished people by no later than 2015. At a time when some experts express concern that these goals will not be met, it is urgent that States rethink national and international policies to ensure that they are indeed achieved. The silent, daily massacre of the hungry must be stopped.

Notes

[1] A brief summary of the broad outlines of the International Code of Conduct by the Executive Director of FIAN may be found in a report on the right to food by the United Nations High Commissioner for Human Rights (E/CN.4/1998/21, para. 18).

[2] Warren Allmand, President of Rights & Democracy, at http://www.ichrdd.ca/frame.iphtml?langue=0.

[3] G. Abi-Saab, "Les sources du droit international: essai de déconstruction" in M. Rama-Montaldo, *Liber Amicorum en hommage au Professeur Eduardo Jimenez de Aréchaga,* Fundación de Cultura Universitaria, Montevideo, 1994, pp. 29-49.

[4] Of 815 million, 777 million were from developing countries, 27 million from transition countries and 11 million from industrialized countries. See Food and Agriculture Organization of the United Nations, *The State of Food Insecurity in the World 2001*, Rome, FAO, 2001, p. 2.

[5] WFP, *World Hunger Map*, WFP, 2001, Geneva.

[6] Iron and zinc are vital for the development of mental abilities. Micronutrients contain other substances too (such as enzymes).

[7] Antenna, "Malnutrition: un massacre silencieux" (unpublished paper), Geneva, 2000 (Antenna, 29 rue de Neuchâtel, 1201 Geneva).

[8] See for example, Administrative Committee Coordination/Subcommittee on Nutrition (ACC/SCN) Ending Malnutrition by 2020: An Agenda for Change in the Millennium, final report to the ACC/SCN by the Commission on the Nutrition Challenges of the 21st Century, 2000 and ACC/SCN, Fourth Report on the World Nutrition Situation: Nutrition throughout the Life Cycle. Geneva, January 2000, p. 53 (regarding HIV/AIDS).

[9] See updated study on the right to food, submitted by Mr. Asbjörn Eide in accordance with Sub-Commission decision 1998/106 (E/CN.4/Sub.2/1999/12).

[10] Régis Debray and Jean Ziegler, *Il s'agit de ne pas se rendre*, Paris, Editions Arléa, 1994.

[11] See note 8 above.

[12] George McGovern, *The Third Freedom: Ending Hunger in Our Time*, Simon and Schuster, 2001.

[13] Richard Jolly, speech at the Millennium Summit of the United Nations, New York, September 2000.

[14] E/CN.4/2001/53, para. 14.

[15] In HR/GEN/1/Rev.5, p. 72, para. 32.

[16] Vienna Declaration and Programme of Action, para. I.5.

[17] See United Nations Press Release GA/SHC/3674 of 27 November 2001 of the Third Committee of the General Assembly.

[18] General Comment No. 9, para 10. See HRI/GEN/1/Rev.5, op. cit. in note 15 above, p. 60. See also the report of the Third Expert Consultation on the Right to Food, organized by OHCHR and held in Bonn from 12 to 14 March 2001 (E/CN.4/2001/148) and the report of the Workshop on the Justiciability of Economic, Social and Cultural Rights, with particular reference to an optional protocol to the Covenant on Economic, Social and Cultural Rights, held in Geneva on 5 and 6 February 2001 (E/CN.4/2001/62/Add.2).

[19] HRI/GEN/1/Rev.5, op. cit. at note 15, p. 67, para. 6.

[20] Ibid., pp 18-21.

[21] Ibid., p. 20, para. 10.

[22] See A/56/210, paras. 27-29, in which the obligations to respect, protect and fulfil the right to food are discussed in detail.

[23] For a comprehensive overview of the debate, see S. Liebenberg, "The justiciability of socio-economic rights: the South African experience", draft presented at the Workshop on the Justiciability of Economic, Social and Cultural Rights, with particular reference to an optional protocol to the Covenant on Economic, Social and Cultural Rights, op. cit. at note 18.

[24] Ibid., p. 20. Liebenberg argues that while the legislature and executive have a wide discretion to formulate laws and policies that have an impact on socio-economic rights, the courts under the South African Constitution retain the ultimate discretion to review the reasonableness of those measures. In that way a relationship of accountability, transparency and responsiveness is fostered between the judiciary, the legislative and the executive.

[25] See "The right to food in national constitutions", in FAO, *The right to food in theory and practice*. Rome, FAO, 1998, pp. 42 and 43. The States are the following: Bangladesh, Brazil, Colombia, Congo, Cuba, Ecuador, Ethiopia, Guatemala, Haiti, India, Islamic Republic of Iran, Malawi, Nicaragua, Nigeria, Pakistan, Paraguay, Sri Lanka, South Africa, Uganda, Ukraine.

[26] See A/56/210.

[27] Section 9. Sections 10 and 11, on the rights to human dignity and life, are indirectly relevant because a substantive interpretation of those rights would extend to protect the same interests as rights to food.

[28] See E/CN.4/2001/62/Add.2, op. cit. at note 18.

[29] Tribunal fédéral suisse, références: ATF 121 I 367, 371, 373 V. = JT 1996 389. See A. Auer, G. Malinverni and M. Hottelier, "Droit constitutionnel suisse", Berne, Staempfli, 2000, pp. 685-690. Translation of the Special Rapporteur.

[30] ATF 122 II 193 B = JT 1998 562.

[31] This indirectly protects the right to food, in its article 4, paragraph 1, which calls on States to recognize the "right of workers to a remuneration such as will give them and their families a decent standard of living". A decent standard of living must first include the ability to feed oneself.

[32] In the first paragraph of article 12, it states that everyone "has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development". Also in paragraph 2 of article 12, it states that "[I]n order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies".

[33] Article 16, paragraph 1, envisages that everyone "shall have the right to enjoy the best attainable state of physical and mental health" and in paragraph 2 that States "shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick". As malnutrition and hunger deprive the body of its resistance and immune systems, millions of people die each year; the right to food can thus be considered to be included within the right to health.

[34] Preambular paragraph 7 states that African States are "convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights".

[35] Article 55 of the African Charter.

[36] There are two main restrictions. Firstly, the Commission should establish its own competence and declare the communication receivable according to the provisions set up in article 56 of the African Charter. Secondly, the communication should relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights (art. 58.1). The Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases. The Assembly may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations (art. 58.2). However, in the case *Constitutional Rights Project v. Nigeria* (regarding Wahab Akame, G. Adeaga and others), the Commission's view of 3 November 1994/28 June 1995 - Communication 60/91 was that Nigeria had violated article 7.1 (a), (b) and (d) of the African Charter regarding the right to a fair trial. This view was adopted regardless of the consideration that the case might reveal the existence of a series of serious or massive violations of human and peoples' rights in this country.

[37] See Opinion of 4 April 1996/10 July 1996 - Communication 25/89 (joined with Communications 47/90, 56/91 and 100/93) - Free Legal Assistance Group, Austrian Committee against Torture, Centre haïtien des droits de l'homme et des libertés (all affiliated to the World Organization against Torture), and *Les Témoins de Jéhovah v. Zaïre*.

[38] It was accused of acts of torture, summary executions, violations of freedom of conscience, illegal detention of people and unfair trials.

[39] It was also accused of violating the right to education under article 17 because the State closed universities and secondary schools.

[40] Following the entry into force on 1 October 1994 of Protocol No. 9 to the European Convention on Human Rights. Direct access to the European Court was enlarged in 1998 when Protocol No. 11 cancelled the European Commission.

[41] As established in article 19 (6) of the Protocol of San Salvador.

[42] Article 16 of the International Covenant on Economic, Social and Cultural Rights.

[43] In 2001 the Commission appointed an independent expert to conduct a study on the draft optional protocol which had been prepared by the Committee on Economic, Social and Cultural Rights.

[44] See resolution 2001/6 of the Sub-Commission on the Promotion and Protection of Human Rights.

[45] Articles 24, 27 and 32 of the Convention on the Rights of the Child recognize the right to food. See E/CN.4/2001/53, para. 47.

[46] Paragraph 2 of article 12 of the Convention is essential for the right to food. According to this article, States must ensure that women have access to "appropriate services in connection with pregnancy, confinement, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation". Article 14 of the Convention is also relevant because it envisages the rights that the States are obliged to ensure for rural women, who play a key role in the food security of their family.

[47] The Geneva Convention Relative to the Protection of Civilian Persons in Time of War has been ratified by almost all States. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) have been ratified by the vast majority of States. Provisions guaranteeing access to humanitarian aid are considered part of customary international law and therefore binding on all States regardless of ratification.

[48] Additional Protocol I, art. 54, para. 1 and Additional Protocol II, art. 14.

[49] Additional Protocol I, art. 54, para. 2 and Additional Protocol II, art. 14.

[50] Article 8, para. 2 (b) (xxv).

[51] Additional Protocol II, art. 17.

[52] For international armed conflict, see art. 8, para. 2 (a) (vii) and (b) (viii) of the Rome Statute; for non-international armed conflict, see art. 8, para. 2 (e) (viii).

[53] According to articles 20 and 46 of the Third Geneva Convention.

[54] According to article 26 of the Third Geneva Convention.

[55] According to articles 89 and 127 of the Fourth Geneva Convention.

[56] Humanitarian food aid in periods of war should be distinguished from food aid in periods of peace.

[57] Resolution 46/182. Resolution 45/100 "stresses the important contribution made in providing humanitarian assistance by intergovernmental and non-governmental organizations working with *strictly humanitarian motives*" (emphasis added).

[58] See Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, *I.C.J. Reports 1986*, paras. 242-243.

[59] According to resolution 46/182, the role of the United Nations has to be conducted under the leadership of the Secretary-General who "should be supported by a secretariat based on a strengthened Office of the United Nations Disaster Relief Coordinator" and "should work closely with organizations and entities of the United Nations system, as well as the International Committee of the Red Cross, the League of Red Cross and Red Crescent Societies, the International Organization for Migration and relevant non-governmental organizations" (para. 33).

[60] Resolution 4 (g) (2) of the 26th International Conference of the Red Cross and Red Crescent.

[61] Peter Kung, ICRC Press Release SC/6371, 3778th meeting, "Difficulty of providing military support for humanitarian operations while ensuring impartiality focus of Security Council debate", 21 May 1997.

[62] Jean-Daniel Tauxe, Director of Operations, ICRC, Geneva, 45th Rose-Ross Seminar, Montreux, Switzerland, 2 March 2000.

[63] This was reiterated by the ICRC in relation to Afghanistan. See "Afghanistan: ICRC call on all parties to conflict to respect international humanitarian law", ICRC communication to the press 01/47, 24 October 2001.

[64] Article 23 of the Fourth Geneva Convention.

[65] Article 8, paragraph 2 (b) (xxv) of the Rome Statute.

[66] Additional Protocol I, art. 70 (2).

[67] Ibid., art. 70 (5). States could provide financial and/or material support for organizations involved in humanitarian assistance and, particularly those in the region concerned, could make available their logistical (airports, ports, telecommunication networks) and medical (hospitals, personnel) infrastructures. See U. Palwankar, "Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law", *International Review of the Red Cross*, No. 298, January-February 1994, p. 23.

[68] Ibid., art. 70 (3) (c).

[69] Ibid., art. 70 (4).

[70] See article 55 of the Fourth Geneva Convention, in the light of articles 69 and 70 of Additional Protocol I.

[71] Additional Protocol I, art. 70 (1).

[72] Ibid.

[73] Fourth Geneva Convention, art. 23.

[74] The articles that describe the legal regime which applies in this situation are article 3 common to the Geneva Conventions and article 18 of Additional Protocol II.

[75] Article 18, paragraph 1, of Additional Protocol II reaffirms this right to offer services.

[76] See L. Boisson de Chazournes, and L. Condorelli, "Common Article 1 of the Geneva Conventions revisited: protecting collective interests", *International Review of the Red Cross*, vol. 82, No 837, March 2000, pp. 67-87.

[77] According to article 89 of Additional Protocol I.

[78] See General Assembly resolution 43/8.

[79] See article 39 of the Charter of the United Nations.

[80] See Security Council resolution 794.

[81] See Security Council resolution 764 (1992).

[82] The Security Council expressed its willingness to respond "... including through the consideration of appropriate measures at the Council's disposal in accordance with the Charter of the United Nations". See Security Council resolution 1265 (1999).

[83] See the NGO Committee on Economic and Social Rights, Fact Sheet No. 2, "A brief history focusing on 1979-2001", at http://www.cesr.org/Emergency%20Response/Afghanistan%20Fact%20Sheet%202.pdf.

[84] World Food Programme, Emergency Report, No. 42, "Afghanistan (c)", 19 October 2001, at http://www.wfp.org/index.asp?section=2.

[85] British Broadcasting Corporation, "Taleban 'demand tax' on aid convoy," 11 October 2001, at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1594000/1594015.stm.

[86] Chris Otton, "The return of Afghan highwaymen threatens aid trucks," Agence France Presse, 18 November 2001.

[87] Action Against Hunger, Press Release, "Aid blocked in Central Asia," 21 November 2001, at http://www.aah-usa.org/centralasia 21 nov 01.htm.

[88] Médecins sans frontières, press release, "MSF rejects link of humanitarian and military actions," at http://www.msf.org/countries/page.cfm?articleid=70FD6D4D-3B90-407D-81F5119552D7CD9E

[89] These NGOs are BADIL Resource Center for Palestinian Residency and Refugee Rights (West Bank), LAW - The Palestinian Society for the Protection of Human Rights and the Environment (West Bank), Al-Mezan Center for Human Rights (Gaza), PNGO-Palestinian NGO Network Palestinian NGOs; Alternative Information Center, B'Tselem-The Israeli Information Center for Human Rights in the Occupied Territories (Jerusalem), Public Committee Against Torture in Israel, Physicians for Human Rights-Israel (Israeli NGOs); Center for Economic and Social Rights (USA), Lutheran World Federation, World Organization against Torture, International Federation of Human Rights (International NGOs); Habitat International Coalition, Housing and Land Rights Committee (Middle East/North Africa) (Regional NGOs). As recalled by the ICRC, the situation of the occupied Palestinian territories falls within the scope of the Fourth Geneva Convention (Conference of States Parties of 5 December 2001. See ICRC, press release 01/65, 5 December 2001).

[90] See also A/56/210, para. 54.

[91] See the World Food Programme, "Emergency assistance to victims of civil strife in the Palestinian territory", project document, emergency operation, available at the WFP web site: www.wfp.org.

[92] Palestinian Bureau of Statistics (PCBS), "Impact of the Israeli measures on the economic conditions of Palestinian households (third round: July-August 2001), press conference on the Survey results, September 2001," available at www.pcbs.org.

[93] UNSCO, updated version of "Impact on the Palestinian economy of confrontation, border closures and mobility restrictions: 1 October 2000 to 30 June 2001," p. 7. Forthcoming.

[94] See UNRWA, "UNRWA Emergency Appeal, Tenth Progress Report Covering September 2001", p. 8; at http://www.un.org/unrwa/emergency/pdf/report10.pdf. For more examples of obstacles faced by UNRWA due to the closures, see "Emergency Appeal Fifth Progress Report (1 October-20 April 2001), Gaza", at www.unrwa.org.

[95] For a description of trouble with the water system in Palestinian villages, including testimonies from people experiencing water crises, see B'Tselem, *Not Even a Drop. The Water Crisis in Palestinian Villages*, August 2001, available at www.btselem.org.

[96] According to the Nablus Directorate of the Palestinian Ministry of Agriculture, almost 10,000 olive trees were destroyed during the first three months of 2001 in that city alone. Report on file with the NGO, LAW.

[97] This information, including location, owner and date of incident, is on file at the NGO, LAW.

[98] See ICRC, press release 01/65, Geneva, 5 December 2001.

[99] See A/56/210, para. 55.

[100] See ibid., para. 53.

[101] World Bank, *World Development Report 2000/2001: Attacking Poverty*, Oxford University Press, 2001, p. 3.

[102] Action contre la faim, Paris, information document, 31 October 1997.

[103] See TD/B/COM.1/EM.11/2 and Corr.1.

[104] In the case of Zambia, for example, import tariffs were reduced under structural adjustment to well below their boundary levels under WTO.

[105] See A/56/210, para. 79.

[106] See, for example, C. Dommen, "Raising human rights concerns in the World Trade Organization: actors, processes and possible strategies" *Human Rights Quarterly* (forthcoming).

[107] See A/56/210, para. 80.

[108] WTO document G/AG/NG/W/101, para. 29 available at http://www.wto.org/english/tratop_e/agric_e/negoti_e.htm#proposals

[109] Ibid., para. 33.

[110] Ibid., para. 36. See also A/56/210, para. 82-83.

[111] WTO document G/AG/NG/W/13 available at http://www.wto.org/english/tratop_e/agric_e/negoti_e.htm#proposals

[112] Duncan Green (Catholic Agency for Overseas Development (CAFOD)) and Shishir Priyadarshi (South Centre), "Proposal for a 'development box' in the WTO Agreement on Agriculture", CAFOD Policy Paper, June 2001. Document available at http://www.cafod.org.uk/policy/devbox.htm

[113] See G/AG/NG/W/13, op. cit., at note 111.

[114] Doha Ministerial Declaration adopted at the Fourth WTO Ministerial Conference, Doha, 9-14 November 2001, WTO document WT/MIN(01)/DEC/1, available at the WTO web site.

[115] See A/56/210, para. 56.

[116] E/CN.4/Sub.2/2000/13, paras. 59-73.

[117] Lecture by Mary Robinson, United Nations High Commissioner for Human Rights, "Bridging the gap between human rights and development: from normative principles to operational relevance", World Bank, Washington DC, 3 December 2001.

[118] E/CN.4/2001/148, paras. 21-45.

[119] Martin Wolpold-Bosein, "Some proposals for a framework legislation at the national level: lessons learned from the perspective of a non-governmental organization", paper presented at the Third Consultation on the Right to Food, Bonn, 12-14 March 2001.

[120] See Jean Ziegler, "*Schizophrénie des Nations Unies*", in *Le Monde Diplomatique*, November 2001, Paris.